



Canada. Royal commission on
transportation

Evidence. vol. 61-63. 1949

1951



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ROYAL COMMISSION ON TRANSPORTATION

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
WEDNESDAY,
DECEMBER 7, 1949.

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HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

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G.R.Hunter,
Secretary.

P.L.Belcourt,
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J.O.C.Campbell, K.C.)	Province of Prince Edward Island

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OTTAWA, ONTARIO,
WEDNESDAY, DECEMBER 7th, 1949

M O R N I N G S E S S I O N

The following is a brief entitled "The Long
and Short Haul Rule", presented by Mr. Hu Harries,
for the Province of Alberta.

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(This follows page 11651, Volume 60)

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THE LONG AND SHORT HAUL

Errata

- p. 7, footnote - "1852" should read "1851".
- after "cap. 51" add "especially Section 14 subsection 1".
- p. 10, line 5 - after "as section 260" add "subsection 2 and 3."
- p. 12, line 16 - "page 504" should read "page 505".
- p. 17, line 19 - delete the second "the".
p. 17, line 20 - "which" should read "and".
- p. 19, line 12 - "55 C.R.C. 45", should read "55 C.R.C. 44,"
p. 19 - between paragraph ending at line 36 and paragraph starting at line 37 insert "And at page 48".
- p. 24 to p. 35 - These figures must be altered in line with Appendix A, Schedule 1, (REVISED).
- p. 54 to p. 57 - Table 2 replaced by Table 2 (REVISED).
- p. 64, line 21 - delete "There is a substantial element of market competition via the Panama Canal or by any other route."
- p. 64, line 35 - "envolve" should read "evolve".
- p. 65, line 5 - "is boats" should read "is the boats".
- p. 66, footnote - "Monthly Traffic Reports" should read "Monthly Railway Traffic Reports".
- p. 69, line 3 - "route" should be "rate"
- p. 73, line 5 - "and" should be "an"
- p. 76, 8th line from bottom - "Behlmar" should be "Behlmer"
- 4th and 5th line from bottom -- The phrase "not merely competition with carriers not subject to the Act" should be in parentheses.
- p. 79, line 5 - "Spokan" should be "Spokane"
- p. 81, 6th line from bottom -- "pp. 77-78" should be "pp. 76-77"
- p. 82, 4th line from bottom -- "pp 79-80" should be "pp. 80-81"
- p. 85, lines 5 - 7 -- The Supreme Court decision mentioned in Intermountain Rates Cases, 234 U.S. 467 (1914)
- p. 91, line 1 of text - "Charcterized" should be "characterized"
- p. 94, line 13 - "unue" should be "undue"
- p. 96, line 2 - "in grease" should be "in the grease" and enclosed in quotation marks
- p. 98, lines 9 & 10 - Delete reference in parentheses, and at end of line 8 insert "(see p. 93, supra.)"
- paragraph 2, line 8 "91-96" should be "92-95"
- p. 105, line 12 - "unreasonably" should be "unreasonable"
- p. 140, paragraph 2, line 1 - "81" should "93"
- p. 143, 10th line from bottom of page -- "mature" should be "nature"
- p. 145, 4th line from bottom -- "as" should be "is"
- p. 151, line 1 - "80-84" should be "92-94"
- line 4 -- "84-86" should be "96-97"
- line 6 -- "90-91" should be "101-102"

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THE LONG AND SHORT HAUL RULE

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PART I - INTRODUCTION

A. The General Problem of Long-and-Short-Haul Discrimination.

Long-and-short-haul discrimination is a special type of place discrimination and has been called by one authority the "most extreme form of local discrimination". (Dewey, R.L., The Long-and-Short-Haul Principle of Rate Regulation. Ohio State University Press, 1935.)

Long-and-short-haul discrimination is composed of three elements:

- (a) a higher absolute rate for shorter than for longer distances,
- (b) shipments of like kinds of freight, and (c) shipments over the same route in the same direction, the shorter haul being included within the longer.

This type of discrimination has been the subject of controversy in Great Britain, in the United States and in Canada. In each of these countries railroad regulation has been designed to prohibit or control such discrimination.

The nature of the discrimination may be illustrated by the following example.

A _____ C _____ B

If a railroad charges a rate of \$1.00 per hundred pounds for transporting a certain commodity from A to B and \$1.25 for carrying it from A to C, the carrier is practising the type of discrimination to which we refer. A similar discrimination results if the rate from C to A is in excess of the rate from B to A.

The first illustration is an example of destination discrimination inasmuch as the shipment originates at A. The second illustration is an example of origin discrimination with the goods moving to A from either B or C. Every case of long-and-short-haul discrimination can be termed either origin or destination discrimination. It is not unusual to find

that both of them affect a particular community, and when this double discrimination is in force, the people of the community are likely to suffer both as producers and as jobbers.

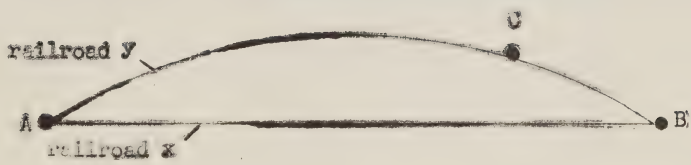
The explanation of long-and-short-haul discrimination, like the explanation of other forms of discrimination, is to be found in the nature of railroad expenses. The fact that a large proportion of a railroad's expenses are constant or overhead costs, * which in the short run do not vary with the volume of traffic, provides the key to the explanation. The railroad rates at the intermediate point C may be reasonable, but if competition makes it impossible to carry traffic from A to B at a comparable rate the railway will tend to lower its charge to B and take the movement. The railways will contend that as long as the through rate to B covers the additional expenses it occasions, the railways and all the shippers are better off.

B. The Forms and Causes of Long-and-Short-Haul Discrimination.

Competition is the leading cause of long-and-short-haul discrimination.. This competition must, first, be more important at a more distant locality than at an intermediate locality, and, second, be so effective at the more distant point that the railroad cannot afford to reduce the general level of its rates in line with the charge to the more distant point. Long-and-short-haul discrimination is therefore the result of the presence of competition at certain places and its relative absence at others.

It is convenient to distinguish four general competitive situations which give rise to long-and-short-haul discrimination

* See Locklin, D. Philip, Economics of Transportation. Richard D. Irwin, Inc. 1947. pp. 535-536. Bigham, Truman C., Transportation Principles and Problems. McGraw-Hill Book Company, Inc. 1947. pp. 110-112. Jackman, W.T., Economic Principles of Transportation, the University of Toronto Press. 1935. pp. 254-255.



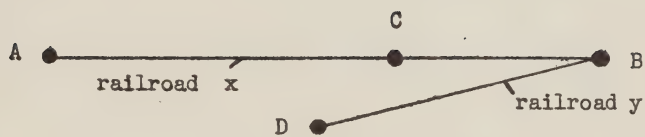
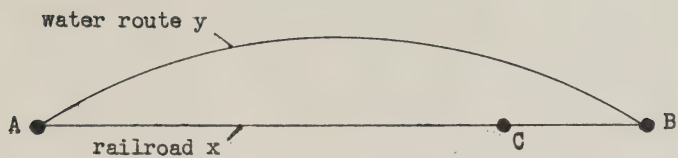
(1) Competition Between Railway Routes Having Similar Mileage and Costs.

Railroads x and y have similar mileage and costs between points A and B. Points C and D are intermediate to B on railroads y and x respectively. Because of competition at B between railroads x and y on traffic from A the rate is depressed below the rate to the non-competitive points C and D. Long-and-short-haul discrimination is thus created at these intermediate points.

(2) Competition of a Circuitous Rail Route With a Direct Rail Route.

Railroad x forms a direct route between A and B. Railroad y is a circuitous route between the same points. Let us suppose that both railroads adopt the same distance scale of rates and that by railroad x the rate from A to B is \$1.25 and by railroad y the rate from A to C is \$1.40, and from A to B is \$1.50. Under these conditions the traffic from A to B would all move by railroad x. Railroad y's rate of \$1.50 would only be a "paper rate" because no traffic would move under it. If railroad y is to carry any of the A to D traffic it must meet the rate charged by x, namely, \$1.25. If railroad y reduces its A to B rate to \$1.25 it immediately creates long-and-short-haul discrimination at C where the rate remains at \$1.40.

(3) Competition of a Railroad With Carriers Having Lower Costs e.g. Water, Pipelines, etc.



This situation is comparable to that outlined in (2) above. The difference is that the circuitous carrier has the lower rate.

Railroad x has a direct line between A and B, two points which are subject to competition by a water route y. Under the railway distance scale the rate from A to C on a certain article is \$1.00, and from A to B \$1.25. The water rate on the same article between A and B is 80¢. Under these conditions railroad x will have to meet the water rate at B or lose the traffic. (For convenience we assume absolute rate competition with no compensating rail advantages.) In meeting the water rate at B it creates long-and-short-haul discrimination at C where the rate remains at \$1.00.

(4) Competition due to Alternate Sources of Supply i.e. Market Competition.

Points A and D produce a commodity consumed at B and C. Railroad x has a distance scale rate of \$1.00 from A to C and \$1.25 from A to B. Railroad y has a rate (on the same scale as x) of 75¢ from D to B. Consumers in B will draw all their supplies from D unless railroad x gets the commodity to them from A at a rate of 75¢. In granting the 75¢ rate from A to B railroad x creates long-and-short-haul discrimination at C where the rate remains at \$1.00.

These examples illustrate the general forms and the causes of long-and-short-haul discrimination. All of the cases with which we deal in Parts II and III fall into one or other of these four types.

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PART II - THE CANADIAN EXPERIENCE

A. Statutory History of the Long-and-Short-Haul Rule in Canada.

Although the first Railway Act in Canada was passed in 1868, it was not until the revision and consolidation of 1903 that a clause forbidding long-and-short-haul discrimination was enacted. The Railway Act of 1903 (3. Edward VII Chap. 58) Section 252, subsection 3 reads:

"3. - No toll shall be charged which unjustly discriminates between different localities. The Board shall not approve or allow any toll, which for the like description of goods or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line, is greater for a shorter than for a longer distance, the shorter being included in the longer distance, unless the Board is satisfied that owing to competition, it is expedient to allow such toll. The Board may declare that any places are competitive points within the meaning of this Act, 51V., c. 29, s. 232, Am."

This subsection was written into the Railway Act as a result of two reports submitted to the Minister of Railways by Professor S. J. McLean. On the Instructions of the Honourable A. G. Blair, Minister of Railways and Canals, Dr. McLean, who was at that time a Professor of Political Economy at the University of Arkansas, prepared two reports respectively entitled, "Reports upon Railway Commissions, Railway Rate Grievances and Regulative Legislation" and "Rate Grievances on Canadian Railways", and dated February 10, 1899 and January 17, 1902. These reports were printed as sessional paper No. 20A Vol. 36 (1902). In his first report Dr. McLean, speaking of the Canadian Northwest, said in part at page 36:

"Competitive through rates have introduced such anomalies in the North-west as are prohibited under the 'long-and-short-haul' clause. Communities which have non-competitive rates have found it advantageous to transport their produce by wagon to some point where competitive rates prevailed. This was the only means whereby a profit might be obtained. In the development of the traffic the distant manufacturer has been given an advantage over the home manufacturer. The rates to intermediate points have been fixed at the same figures as, or even higher than, rates to the coast. The rate system has been favourable to some sections and unfavourable to others. The development of the North-west is

bound up with a satisfactory solution of the rate question. There is no doubt that the population and business of this section have not been allowed to move and develop in accordance with natural principles. The arbitrary constraint of competitive rates has influenced the development. What is needed, not only in the interest of this section but of all portions of the country, is a satisfactory solution of the rate problem."

It is reasonable to suppose that the "long-and-short-haul clause" Dr. McLean referred to was the one contained in the United States Statute, the Act to Regulate Commerce, enacted in 1887, (24 Statutes at Large, pp 379 - 387) commonly called the Interstate Commerce Act. Therein, in what is the fourth section of the Act, it was provided:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance; provided, however, that upon application to the commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission be authorized to charge less for longer than for shorter distances for transportation of passengers or property; and the commission may from time to time prescribe the extent to which said designated common carriers may be relieved from the operation of this section of this Act."

This is commonly referred to as the "Fourth Section" or the "long-and-short-haul" rule.

The Canadian legislation before 1903 had made some mention of discrimination but only in a very general sense. That legislation will be briefly reviewed at this point. The Railway Act of 1868 (31 Vict. cap. 68) provided in part in Sec. 12, subsection 6:

"6. All or any of the tolls may, by any by-law, be reduced and again raised as often as deemed necessary for the interest of the undertaking; but the same tolls shall be payable at the same time and under the same circumstances upon all goods and by all persons, so that no undue advantage, privilege or monopoly may be afforded to any person or class

of persons by any by-laws relating to the tolls." *

The emphasis of this subsection was on "undue advantage" and it was interpreted rather narrowly. There were ten rate cases heard before the Railway Committee of the Privy Council during the fifteen years this sub-section was operative, and none of these dealt directly with long-and-short-haul discrimination. Protection against such discrimination was at best only implied.

The Railway Act of 1879 (42 Vict. cap. 9) did not elaborate upon subsection 6 of the Act of 1868 but in 1883 (46 Vict. cap. 24) the following amendment to subsection 6 of section 17 of the Act of 1879 was made:

"6. And whereas, it is expedient that a Railway Company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favoring particular persons, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular persons, therefore it shall be lawful for the company, subject to the provisions and limitations herein and in their special Act contained, from time to time to alter or vary the tolls by the special Act authorized to be taken, either upon the whole or upon any particular portions of the railway as they shall think fit: Provided that all such tolls be, at all times and under the same circumstances, charged equally to all persons, and after the same rate, whether per ton, per mile or otherwise, in respect of all passengers and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway; and no reduction or advance in any such tolls shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the railway."

The effect of this amendment was to make more explicit the prohibition against "personal" discrimination.

The Railway Act of 1888 (51 Vict. cap. 29) introduced some amendments which altered the discrimination clauses. In this Act Sections

* See also the earlier statute of Canada, the Railway Clauses Consolidation Act, (1852, 14 and 15, Vict. cap. 51.)

224, 225 and 232 which replaced Section 17, sub-section 6, of the Act of 1879 read as follows:

"224. Such tolls may be fixed either for the whole or for any particular portions of the railway; but all such tolls shall always, under the same circumstances, be charged equally to all persons, and at the same rate, whether per ton, per mile or otherwise, in respect of all passengers and goods and railway carriages of the same description, and conveyed or propelled by a like railway carriage or engine, passing only over the same portion of the line or railway; and no reduction or advance in any such tolls shall be made either directly or indirectly in favor of or against any particular company or person travelling upon or using the railway."

"225. The tolls fixed for large quantities or long distances may be proportionately less than the tolls fixed for small quantities or short distances, if such tolls are, under the same circumstances, charged equally to all persons but in respect of quantity no special toll or rate shall be given or fixed for any quantity less than one car load of at least ten tons."

.....

"232. No company, in fixing any toll or rate, shall, under like conditions and circumstances, make any unjust or partial discrimination between different localities; but no discrimination between localities, which, by reason of competition by water or railway, it is necessary to make to secure traffic, shall be deemed to be unjust or partial."

In the foregoing provisions we find the first prohibition of discrimination other than that between persons. In Section 232 discrimination between localities is expressly prohibited except when such discrimination arose as a result of either rail or water competition.

As we mentioned earlier the revised and consolidated Act of 1903 once again altered the "discrimination" sections and incorporated the long-and-short-haul rule into the legislation as Section 252 subsection 3.

Since 1903 there has been no significant change in those sections of the Act which deal with discrimination. Section 314 of the Railway Act of 1919 (9 - 10 Geo. V. cap. 68 - now to be found as Revised Statutes of Canada, 1927, cap. 170) substantially follows Sec. 252 of the Act of 1903. It reads as follows:

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"314. All tolls shall always under substantially similar circumstances and conditions, in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise.

"2. No reduction or advance in any such tolls shall be made, either directly or indirectly, in favour of or against any particular person or company travelling upon or using the railway.

"3. The tolls for carload quantities or longer distances may be proportionately less than the tolls for less than carload quantities, or shorter distances, if such tolls are, under substantially similar circumstances, charged equally to all persons.

"4. No toll shall be charged which unjustly discriminates between different localities.

"5. The Board shall not approve or allow any toll, which for the like description of goods, or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line or route is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the Board is satisfied that, owing to competition, it is expedient to allow such toll.

"6. The Board may declare that any places are competitive points within the meaning of this Act. 1919, c. 68, s. 314."

It will be seen that subsections 4, 5 and 6 merely expand into three subsections what was formerly subsection 3 of Section 252 of the Act of 1903. In addition to Section 314 subsection 5 of the Railway Act which is the principal section dealing with long-and-short-haul discrimination, Section 329 subsection 3 and subsection 4, are of interest. They provide:

"3. The special freight tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any particular commodity or commodities, or for each or any class or classes of the freight classification, or to or from a certain point or points on the railway; and greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction, if such shorter distance is included in the longer.

4. The competitive tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any class or classes of the freight classification, or for any commodity or commodities, to or from any

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specified point or points which the Board may deem or have declared to be competitive points not subject to the long-and-short-haul clause under the provisions of this Act."

These subsections first appeared in the Railway Act of 1903 (3-4 Edw. VII, 1903, cap 58) as section 260. Aside from several minor alterations they retain their original wording.

B. Administrative History of the Long-and-Short-Haul Rule in Canada.

Prior to 1903 there were no Canadian decisions dealing specifically with the matter of long-and-short-haul discrimination.

In speaking of the Imperial Act of 1854 one authority observes that: "The decisions of the Courts and the Railway Commissioners upon the construction of the 'undue preference' clause of Section 2 of the Railway and Canal Traffic Act, 1854, 17 & 18 Vict. cap 31 (incorporated in Sections 253, 1, q.v.) have substantially accomplished the object of this section." (MacMurchy and Denison - The Canadian Railway Act of 1903 Annotated, page 498)

One of the first long-and-short-haul cases heard by the Board of Railway Commissioners (established in 1904) was British Columbia Pacific Coast Cities v. Canadian Pacific Railway Co. (1907) 7 C.R.C. 125.

In this case the learned Chief Commissioner, A.C. Killam, stated at page 147:

"The remaining point arises out of the facts that, in order to meet water competition on the Pacific Coast, the railway company carries goods from Eastern points to the Pacific Coast at lower rates than to interior Western points, and that the same practice prevails with reference to the rates from Winnipeg Westward; and that at many interior points, the rates from Winnipeg are less than the combined rates from Winnipeg to points on the Coast, and from the latter points to the interior ones. The low rates to the Coast are made necessary in order to enable the railway companies to obtain traffic in competition with ocean carriers.

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Such a practice is distinctly authorized by the Railway Act, and unless the higher rates from Eastern points to interior Western points are, in themselves, unjust or unreasonable, this practice does not involve unjust discrimination. Necessarily the situation must have a modifying effect upon the rates to the interior points, which must vary with the distances from the Pacific ports. Prima facie the railway company should be entitled to charge reasonable rates from the Pacific ports Eastward, and it should not be obliged to charge, and would not even be warranted in charging, excessive rates to the interior points for the purpose of equalizing the position of the Pacific Coast points. It does not appear to me that the mere fact that the Westbound rates from Winnipeg or any other point to such interior Western point are less than the rates which would be made up by a combination of the rates from such Eastern points to Pacific points, and from the latter to the interior point, in itself, constitutes unjust discrimination or undue preference. The railway company is allowed to meet competition at the coast points, and I think it should equally be allowed to meet the effect of that competition upon interior points to a reasonable extent." (emphasis ours)

The Vancouver distributors wanted the Canadian railways to employ the same principle for "interior" rate construction as the United States lines used. They wanted the interior rates to be the sum of the transcontinental rate and the back-haul distributing rate. The Canadian railways had given the interior points some of the benefit which arose from the low transcontinental tariff and although Long and Short Haul discrimination existed it was not maximized.

In 1909 Mr. Commissioner McLean wrote the judgment of the Board in Plain and Co. v. C.P.R. 9 C.R.C. 22, which arose in connection with the shipment of apples. His judgment in part stated at page 223:

"The rate charged by the Canadian Pacific Railway from Picton to Ottawa is 17 cents per hundred pounds while the rate from Picton to Smith's Falls, an intermediate point located on the Rideau Canal, is 23 cents. It is alleged that the latter rate is excessive.

"The traffic moving to Ottawa is subjected to effective water competition both by the Rideau Canal and by the Ottawa River via Montreal. The rate to Ottawa is a compelled rate based on water competition. It is the privilege of a railway, in its own interests, to meet water competition. It is not, however, the privilege of a shipper to demand less than normal rates because of such competition which the railway does not, in its own interest, choose to meet.

"Where a railway chooses to meet competition it is to be presumed, unless the contrary is established, that it does so because there is effective competition in regard to traffic important in amount. It is established in evidence that such

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a condition does not exist at Smith's Falls. The compelled rate to Ottawa cannot then be taken as the measure of the reasonableness of the shorter distance rate to Smith's Falls, and the complaint should therefore be dismissed."

Although the complaint was made under section 252, subsection 3, the judgment makes no reference to that section. The question was decided upon the ground that a shipper cannot demand a less than normal rate due to competition that the railway does not choose to meet. The Board declared that Ottawa was a competitive point and that Smith's Falls was not. It accepted the railway's desire to meet competition as the criterion of what constitutes a competitive point.

In the same year in Bonnors' Ferry Lumber Co. v. Great Northern R. Co. ((1909) 9 C.R.C. 504, upon complaint of a lumber company that it was charged more to an intermediate point on a circuitous route than the rate to a competitive point, a greater distance away, it was held by Mr. Commissioner McLean at page 504:

"In meeting the short line mileage no necessary obligation is created to apply the same basis on intermediate distances not subjected to the same short line mileage competition."

In Blind River Board of Trade v. Grand Trunk, et al (1913) 15 C.R.C. 146. it was stated by the applicants that Blind River, a point between London and Sault St. Marie, was discriminated against because it paid a higher toll than the further point. At page 154 the Board said:

"A rate regulative tribunal has to recognize that water competition where effective demands recognition, and that its effect may be by creating competition at a point or points, to afford a justification of a rate situation, which, if it were brought about by railway conditions alone would fall within the inhibitions of the Railway Act in regard to unjust discrimination and undue preferences."

In Western Freight Rates Case (1914) 17 C.R.C. 123 in connection the the long-and-short-haul rule the Chief Commissioner, Sir Henry L. Drayton, K.C., said at page 146:

"Subsections 5 and 6 (of sec. 314) are the long-and-short-haul sections, the effect of which is to permit a reduced charge on movements to a competitive point, even although that reduced charge is smaller than the charge made for carriage for lesser distances along the same line to intermediate points. The subsections are sections which directly recognize the necessity, in proper cases, of operation at a reduced toll justified by competitive conditions. The result is, therefore, that lesser tolls may be legal under such circumstances, and that a discrimination may exist between different localities without such discrimination amounting to an illegal practice."

In Dominion Sugar Co. v. Grand Trunk, et al, (1914) 17 C.R.C. 240,
the Board said at page 240:

"A carrier by rail may be justified in reducing tolls from one point to another to meet effective water competition between those points, notwithstanding that the lowered toll appears discriminatory as against a third point, which is not affected by such competition, and which is therefore subject to higher tolls, but a continuance of the competitive toll, after the water competition ceases or is suspended (e.g., in winter), constitutes unjust discrimination against such third point."

Although the Dominion Sugar case did not involve long-and-short-haul discrimination, being concerned with market competition, it states a principle which is of consequence to the long-and-short-haul issue. The principle is contained in the statement that "a continuance of a competitive toll after water competition ceases or is suspended (e.g. in winter) constitutes unjust discrimination."

In Bowlby v. Halifax and South Western Ry. Co.
(1916) 20 C.R.C. 231, where it was charged that the rate from Halifax to Medway, an intermediate point, exceeded the rate to Liverpool, the Board held at page 237:

"At Liverpool, there has been effective competition in varying degree. The railway is so situated that it is subjected to potential competition at this point. It is in its discretion whether it shall or shall not meet this competition. The fact that it has met the competition at Liverpool does not place on it any obligation to meet the competition at Medway station, nor is the rate as it is put in to meet the competition at Liverpool a necessary measure of the rate to Medway."

Further in connection with potential competition
at page 236 the Board said:

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"The variation in rates in regard to commodities carried to Liverpool would seem to indicate a variation in the effectiveness of water competition. The railway admits that water competition is not active now at Liverpool; but it contends that, instead of it having disappeared entirely, it is merely dormant,

"If for the time being water competition is not so active at Liverpool as hitherto, as would seem to be shown by the range in rates already referred to, it appears that the competition is none the less potential. In recognizing water competition as a factor bearing on rates, bringing about a compelled basis lower than normal, it has to be recognized that not only actual but potential competition is regulative, because, in the case of potential competition, the rates cannot go beyond that point which will attract vessels to compete. The Interstate Commerce Commission, in Raworth v. Northern Pacific Railroad Co. et al., 5 I.C.C.R., said, in substance: Competition has a potential existence where the means of such competition exist and all the conditions are such that it is morally certain an advance in rates by the carrier will result in developing competition or controlling forces. Where the facts make out a case of this kind, it would be unreasonable to require the carrier to go further and demonstrate an actual advance in rates resulting in loss for the time being of traffic involved that such traffic would so result."

In Dominion Cannery and Glass Co. v. Canadian Freight Association (1917) 22 C.R.C. 312 where an increase in transcontinental rates on canned goods was the subject of complaint, the Board held that the increase was justified due to decreased competition on intercoastal water traffic. The Canadian railways had raised their tariffs as a result of the increases allowed in the American transcontinental rates which had resulted from complaints lodged by intermountain interests in Utah, Washington, Oregon and Montana against the low coast rates.

In Regina Board of Trade v. Canadian Pacific Railway Co. (1917) 22 C.R.C. 315, where increases in the rates to Regina arising from increased west to east transcontinental rates were attacked, the Board said at page 321:

"The rate is on a water-compelled basis, and Montreal is the maximum to the intermediate point, thus spreading over the intermediate points not affected by water competition the effects of the competitive rate basis."

Further to the point it said at page 323:

"The Panama Canal route by keener competition reduced the transcontinental rates, and the effect of this, although lessened in degree as the point affected was situated further

north, was seen in the rates from North Pacific terminals and Vancouver. The reductions in the transcontinental rates from these points were spread back, controlling the maximum rates to intermediate points." (emphasis ours)

In City of Chatham et al v. C.P.R. (1917) 22 C.R.C.

391, where it was shown that the lumber rate from Thessalon to Chatham, an intermediate point, was higher than the rate to Detroit, the Chief Commissioner held that inasmuch as water competition was effective at Detroit and ineffective at Chatham the railway "is justified in maintaining a lower rate to that point than it maintains to Chatham". (Page 393).

The Chief Commissioner also found the rate to Chatham reasonable "per se" because a comparison of the average per ton per mile rate for all traffic with a per ton per mile rate on lumber from Thessalon to Chatham showed the latter rate to be lower.

Under conditions much like those in the Chatham case it was held in Sidney Board of Trade v. Great Northern Railway Co. (1918) 23 C.R.C. 173, at p. 175, that "the railway company is justified in maintaining the lower rate to Victoria without making it applicable to intermediate non-competitive points like Sidney."

In the General Freight Rates Investigation (1927) 33 C.R.C. 127, the Chief Commissioner, the Honourable H. A. McKeown, K.C., said at page 135 and 136:

"The Transcontinental Rate Scale has a very definite purpose, and one which should be commended rather than criticized. While it gives rise to some anomalies, nevertheless such are not by any means to prevail against the benefit of the system as a whole. It is true that some localities east of Vancouver are compelled to pay on certain commodities transportation rates greater than those charged for the long haul; but the real issue in that regard is whether the charge for the short haul is reasonable and fair. The two sets of rates are based on different principles, as is well recognized, and are not to be judged by the same standard.

"Transcontinental carriage of freight has been much affected by reason of the cheaper, although much more lengthy and circuitous water route furnished by the Panama Canal. In instances wherein

rapid delivery is not essential, the competition of the latter route is most formidable. The establishment of this route has deprived railways of much traffic, and wherever they can meet such competition by making low transcontinental rates, they should be encouraged to do so, and schedules framed for that purpose should not be disturbed.

"A criticism of some force, however, developed through the complaint that by reason of the transcontinental rate to Vancouver and the rate eastward therefrom, certain distributors in Alberta find themselves at a disadvantage as compared with distributors in Vancouver. The instances of such were not impressive and are not to be met by alteration or elimination of the transcontinental rates, which under present conditions need no justification."

In the Palisade Coal Company and the Canadian National Railway, (1928) 35 C.R.C. 47, which concerned the coal rates from Carbon to Winnipeg, the Chief Commissioner, the Honourable H. A. McKeown, K.C., said at page 49:

"The situation which gave rise to the Carbon rate, and incidentally to this complaint, is that on account of the layout of its line the Canadian Pacific Railway Company has to back-haul coal from Drumheller Mines through Carbon, in order to carry it to eastern consuming points. In this movement it has treated Carbon as a point controlled by the long and short haul clause of the Railway Act, and, consequently, has accorded to Carbon the advantage of the Drumheller rate as maximum, although such rate is lower than is directed in the Western Rates Case judgment. It is in comparison with this rate so given to Carbon, that complaint is entered against the Canadian National Railways on behalf of Three Hills. It will be observed that no such condition exists in connection with the haul eastward from Three Hills as has been explained with regard to Carbon, which is a point on the Canadian Pacific Railway, Three Hills being on the line of the Canadian National Railways. These two points are not separated by any great distance, but they are on different railway lines and the above facts create a distinction between them. There is no long and short haul situation in connection with Three Hills such as gives rise to the Carbon rate."

The Board said in Eastern Canada Preserved Goods Association (1928) 35 C.R.C. 179 at page 181:

"It is an accepted principle in rate-making that it is optional with the railway companies to meet competition by lowering rates under such circumstances, and the Board makes no dissent from that course even if it seems doubtful whether such rates be in themselves sufficient for the railway companies to earn a fair return." (emphasis ours)

Brock Company (Western) Limited, C.F.A. (1931) 38 C.R.C. 326 is an important case dealing with the transcontinental

competitive tariffs. The report of the Chief Traffic Officer, W. E. Campbell, was issued as the judgment of the Board. Mr. Campbell says in part at page 328:

"In the present case, applicant alleges discrimination against Calgary and in favour of Vancouver with respect to the articles here in question. While, as already pointed out therein, there is no carload rating in the classification for blankets, pillow cases, sheets and towels, and all shipments of these articles throughout Canada (except to the British Columbia coast) are assessed L.C.L. rates, there is an exception - not by classification provision, but by the terms of a special competitive tariff - in the case of shipments from Eastern Canadian points to British Columbia coast points. The tariff in question (Canadian Freight Association C.R.C. No. 466) is one publishing competitive westbound transcontinental freight rates on various specific commodities from Eastern Canadian points of origin to British Columbia coast destinations. The rates in this tariff are much lower than the regular or normal rates under the provisions of the freight classification and the class rate tariffs which have always been considered of a highly competitive nature, being related to the rates on the same or similar commodities established from Eastern United States points to Pacific coast points as well as rates put in to meet special competitive conditions, i.e., water competition or market competition. The normal rate on cotton piece goods in carloads from Eastern Canadian points (Montreal and West) to Vancouver is \$2.81½ per 100 pounds; the special competitive rate is \$1.77½. Further, the normal rate between the same points on blankets, pillow cases, sheets and towels is \$5.52½ per 100 pounds, but these articles may under this special competitive tariff be included with cotton piece goods at the \$1.77½ rate. With this exception, the classification ratings and normal class rates apply throughout Canada, which, in the case of Calgary, makes the rate on cotton piece goods in carloads \$2.34½, and on the other articles named the L.C.L. rate of 4.59½ applies as compared with the L.C.L. competitive rate to Vancouver of \$3.27. It will thus be observed that under the special competitive rate to Vancouver blankets, pillow cases, sheets and towels may be included with cotton piece goods at the carload rating applying thereon, while to Calgary where the normal rate basis applies, this is not permitted."

Quoting the railway reply to the application Mr.

Campbell continues:

"This application for carload rating on articles that never moved in straight carloads is apparently based on the fact that a regulation similar to that proposed now applies on traffic for Vancouver and other British Columbia Pacific Coast points. The Board, as well as the Brock Company, are undoubtedly well aware of the reasons why the railways have found it necessary to establish certain rates and carload mixtures on traffic to British Columbia Coast points, and it is understood by the Railways, as well as the Board, and practically all Canadian

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manufacturers and receivers that rates or carload mixtures that may be established to British Columbia Coast points are in no way a precedent for similar rates or mixtures to intermediate points."

In Mount Royal Rice Mills Ltd. v. C.F.A. (1935) 43

C.R.C. 248 the applicants asked to have a low competitive tariff on rice disallowed. The Board held that "competition, either actual or potential, is a justification for lower rates than those normally effective by rail" (page 250), and refused the application.

In Gainers Ltd. v. Canadian Freight Association

(1935) 43 C.R.C. 309 where the complaint was that the \$1.50 rate on inedible tallow in tank cars from Edmonton and Calgary to Eastern Canadian points was unreasonable, the Board held that the existence of lower rates to the same destinations from Vancouver was not discriminatory and quoted the General Freight Rates Inquiry judgment re transcontinental competitive rates.

At page 310, in a dissenting opinion F. N. Garceau, K.C., Deputy Chief Commissioner found that:

"The essential facts submitted in support of complaint were not contradicted by the railways and must be considered proved. The facts establish that complainant is handicapped by the existing rates in his competition with the producers from B.C., the U.S.A. or Eastern Canada in the markets of Quebec and Ontario. The written submissions in support of complaint and on behalf of the railways set out at length and discussed. The Board has full power under the Act to fix, determine and enforce just and reasonable rates and to change or alter, as changed conditions or cost of transportation may from time to time require. In view of its powers and the principles which ought to govern in the administration of the Act, and having regard to the fact that the railways have not met their statutory obligation of disproving that the lower toll or difference in treatment does not amount to an undue preference or an unjust discrimination, the railway should be directed to publish rates on inedible grease and inedible tallow from Calgary and Edmonton 25 percent lower than shown in the tariff, the toll for a shorter haul not to exceed the toll for a longer haul."

In Central Alberta Dairy Pool Ltd. and Sunny Alberta

Creameries Ltd. v. C.P.R. and C.N.R. (1936) 46 C.R.C. 10 the Central Alberta Dairy Pool Ltd. applied to the Board to have the Red Deer and

Alix rates, via C.P.R. and C.N.R. respectively, to Vancouver put at the Calgary and Edmonton rate. The applicants appealed on the basis of section 314 (5) of the Railway Act. The Board held that a circuitous route is privileged to meet the short-line mileage without extending the compelled rate to non-competitive points.

In Shuswap Lake Lumber Co. v. C.P.R. (1935) 44 C.R.C. 87, it was held that to charge more to haul lumber from Canoe (322 Miles east of Vancouver) to Ontario than was charged from Vancouver to Ontario was not contrary to section 314 (5) nor did it involve any unjust or undue discrimination.

In Agricultural Co-operative Society v. C.N.R. (1942) 55 C.R.C. 45, the anomaly of long-and-short-haul discrimination was considered by Chief Commissioner J. A. Cross, K.C. and at page 47 he said:

"The Points stressed by the applicants, and the basis of their application for the extension of the competitive rate of 20¢ per 100 pounds from Chicoutimi to all the points covered by the application, may be briefly summarized as follows:

"The railway distance from the points in question to Montreal, except in the case of Dolbeau, is less than from Chicoutimi. Why should shippers have to truck their cheese to Chicoutimi, to obtain the benefit of the competitive rail rate when, by application of the Chicoutimi competitive rate from these other points, the railway would not be put to any additional expense; would have a slightly shorter distance to haul the cheese, which should be of some advantage to the railway; the railway would obtain the same revenue as it at present receives, consequently would not lose one cent or one pound of traffic by applying the Chicoutimi rate from all the points in question.

"It is also pointed out that transportation by trucks during the summer heat can greatly affect the quality of the cheese; that, inasmuch as rubber and gasoline are products essential to the Canadian war effort, it is important that these products be saved by all possible means, and there is the possibility that restrictions may be imposed of such a nature as to eliminate much trucking, thus preventing the transportation of cheese by this means to Chicoutimi or Jonquiere."

"One can appreciate how a shipper sees an apparent anomaly in the carriage of traffic for a longer than for a shorter distance over the same line at a lower rate, but this overlooks the express provisions of the Railway Act with regard to competitive traffic and the circumstances under which competitive rates are established by the railways. The Canadian rate structure, by reason of the competitive provisions of the Railway Act, is honeycombed with rates which are lower for longer than for shorter hauls over the same line in the same direction: In other words the apparent anomaly stressed by applicants could be illustrated by hundreds of similar cases.

A brief statement concerning the general situation with respect to rates throughout the country, and not confined to the restricted scope of this application, would seem here desirable, because the Board has to view these matters in their broader scope and general aspect. In the absence of water competition from Chicoutimi there would be no competitive rail rate, and any application or complaint with respect to rail rates would have required to be on quite different grounds from those embraced in this application. It would have been necessary to attack the existing rates from the standpoint of their unreasonableness 'per se' concerning which no evidence whatever was placed on the record here. A mere comparison as between competitive rates and normal rates is no evidence of the unreasonableness of the normal rates 'per se'. When the railways can secure, through the establishment of competitive rates, additional traffic which may be handled at less than average unit costs, or without the use of additional transportation facilities, rates substantially lower than those which would be maximum reasonable tolls, but which would be reasonably compensatory on the traffic involved, result in some contribution over and above out-of-pocket cost to the general overhead expense of the railway. If however, compelled to handle all traffic on the basis of these lower rates voluntarily established to meet competition and there are thousands of them across Canada made to meet a wide variety of conditions - the result would be insolvency of the railways.

"In the absence of publication of the competitive rate from Chicoutimi and Jonquiere, applicants would have no grounds upon which to approach the Board alleging any unjust rate discrimination, but it is not apparent that their position would thereby be in any way different from what it is today. The lower rate via the unregulated transportation agency existed before the competitive rate was published by the railway, consequently the applicants have not been subjected, by the competitive rail rate, to any detriment that did not exist prior to its publication."

C. The History of the Canadian Transcontinental Freight Rate Structure.

The transcontinental freight rate structure has been influenced by competitive conditions since its inception.

(1) Class Rates

The first class rates between Eastern and Western Canada were constructed via Chicago but with the completion of the Canadian Pacific line north of Lake Superior a system of "arbitraries" applying from stations east of Fort William to that point was established. These became one factor in the through rate; the other was the local Prairie class rate applying west of the head of the lakes.

The arbitraries to Fort William were influenced by the existence of water competition. These arbitraries bore a direct relation to the water charge and presumably were premised upon some concept of a "fair" distribution of traffic between the two types of carriers.

Until April 17, 1899, the class rates to the Pacific coast were on the same basis as all east-west class rates. This meant that they were formed by adding together the "eastern" arbitrary to Fort William and the Prairie standard mileage scale (derived from Canadian Pacific Tariff 270) inflated for the mountain haul on a basis of roughly 2 for 1.

On April 17, 1899, the rates applying from the Lakehead to Vancouver, New Westminster and Victoria were altered. The new rates were constructed by using the United States Missouri River to Pacific Coast rates plus five cents. This meant that there were two arbitraries, and an American class rate as factors in the Canadian rates to the Pacific coast. This arrangement continued until September 1, 1914, when the decision in the Western Rates case caused a re-alignment in the structure.

Prior to September 1, 1914, there was a considerable element of long-and-short-haul discrimination in the class rate structure. The extent of this discrimination is obvious from the following table:

TABLE 1

SPECIAL CLASS RATES FROM PORT ARTHUR AND FORT WILLIAM *

Line 1 -- Rates prior to September 1, 1914.

Line 2 -- Rates after September 1, 1914.

To	Miles	1st	2nd	3rd	4th	5th	6th	10th
Revelstoke...B.C.	1528	303 251	253 209	202 167	152 126	140 115	125 104	73 61
Kamloops.....B.C.	1657	323 263	269 217	214 172	160 131	148 119	134 107	78 65
Ashcroft.....B.C.	1704	328 269	273 221	217 174	162 134	150 121	137 109	82 67
Yale.....B.C.	1806	343 278	284 227	225 177	167 139	155 124	142 112	85 70
Vancouver....B.C.	1883	300 287	260 233	220 180	179 143	160 127	154 115	85 73

* See report of Western Rates Case in C.F.A. publication No. 538 page 101.

With the Western Rates Case the long-and-short-haul discrimination that existed in the class rate structure was eliminated.

(2) Commodity Rates

The commodity rate situation is more complex than the class rate situation.

Our research indicates that until the effective date of the Western Rates Case judgment there were no transcontinental competitive commodity rates of importance. It may be noted that at that date there were no commodity rates on manufactured articles and their raw materials in Western Canada, but on certain items special rates had been extended to British Columbia. The only commodity rate potentially able to effect long-and-short-haul discrimination on a trans-priorie movement was the lumber rate. The Winnipeg rate was blanketed back to avoid this.

After 1914 the growth of transcontinental competitive rates was rapid. These rates were published in sympathy with the comparable American rates which from 1914 to 1917 evidenced the effects of actual and potential Panama Canal traffic.

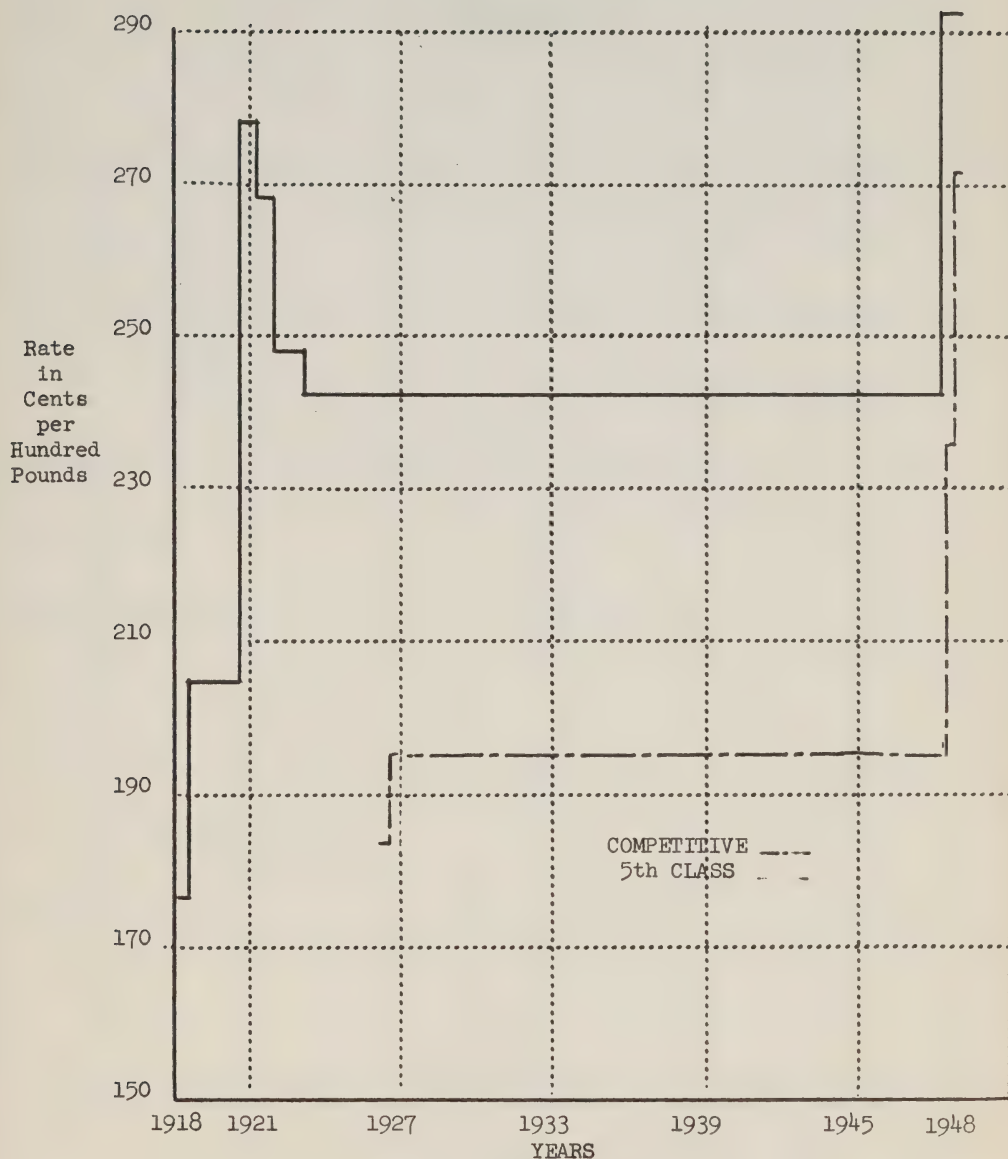
It is instructive to note that in the period of horizontal rate increases during and following World War 1 the increases allowed in the Canadian transcontinental rates were controlled by the American increases. In the Fifteen Percent Increase Case, (1917) 7J.O.R.R. 455, the trans-continental commodity rates because of their competitive nature with American rates were not increased except in conformity with advances made by American railroads. Again in the Forty and Thirty-five Percent Increase Case, (1920) 10 J.O.R.R. 283, increases in these rates were permitted to the same extent as in the United States, i.e. 33 1/3 percent.

Since the reductions ordered in Reduction in Freight Rates, (1921) 11 J.O.R.R. 330, which set the rates at 25 percent over the September 1, 1920, figure, the alterations that have taken place in the

transcontinental competitive commodity rates may be seen from the following figures which trace these changes by reference to a number of important commodities.

FIGURE 1

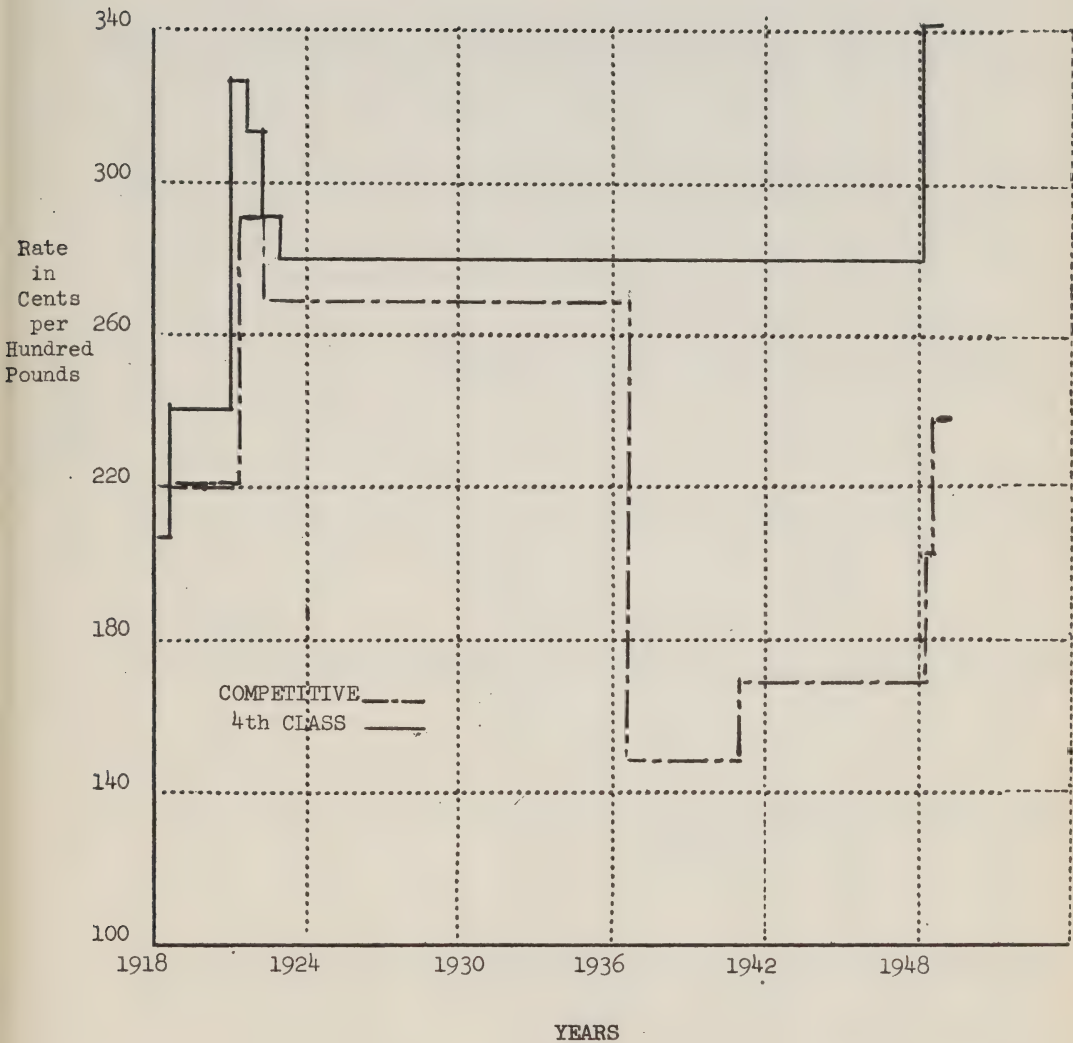
Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on
Vehicle Parts - Self Propelling
1918-1948



- Note: (1) See Appendix A. Schedule 1 for the detail of these rates.
- (2) Vehicle Parts - Self Propelling - took straight class rates prior to February 8, 1926.
- (3) Vehicle Parts - Self Propelling - take Class Rates from 1st to 5th class - in this chart 5th class has been used - hence, this comparison is not the most favorable which might have been made.

FIGURE 2

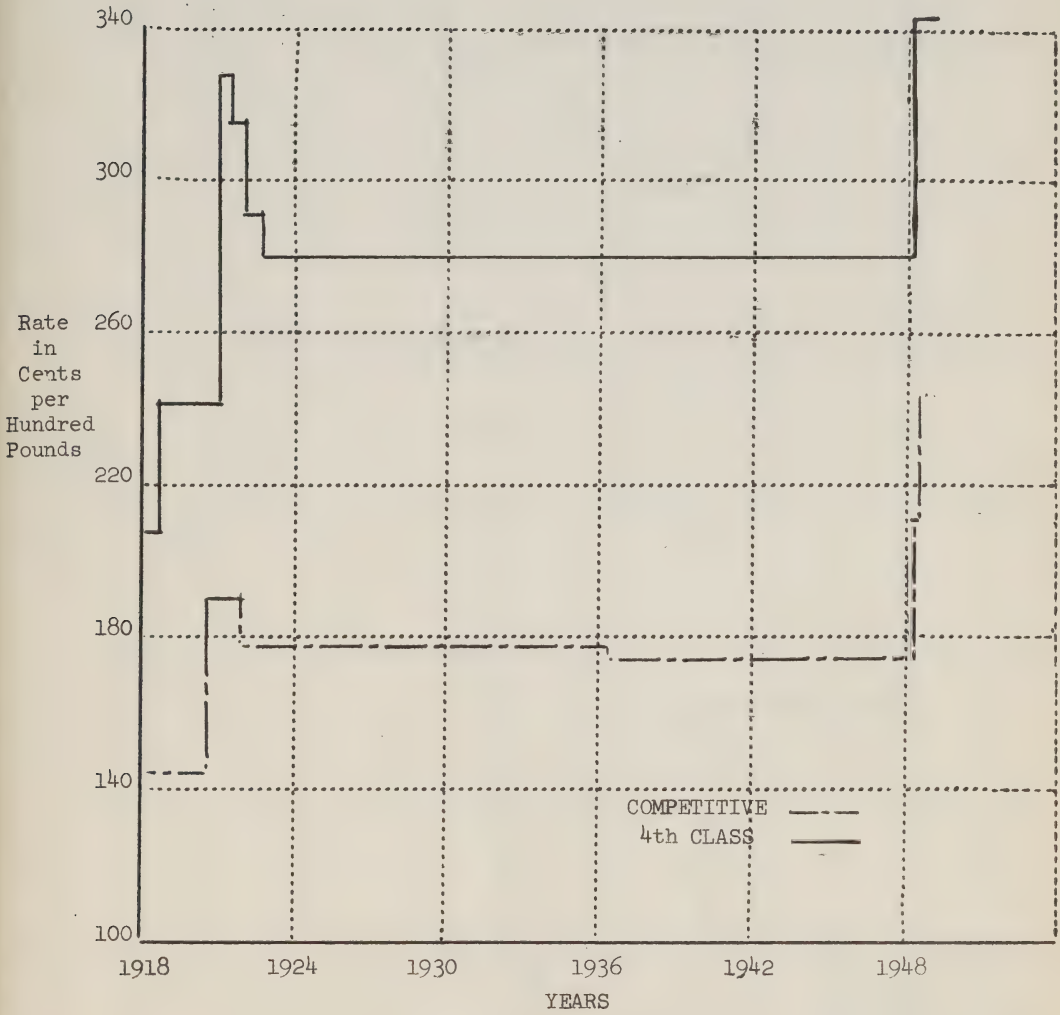
Comparison of the Transcontinental All Rail Class
Rate with the Competitive Commodity Rate on
Acids, N.O.I.B.N.
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 3

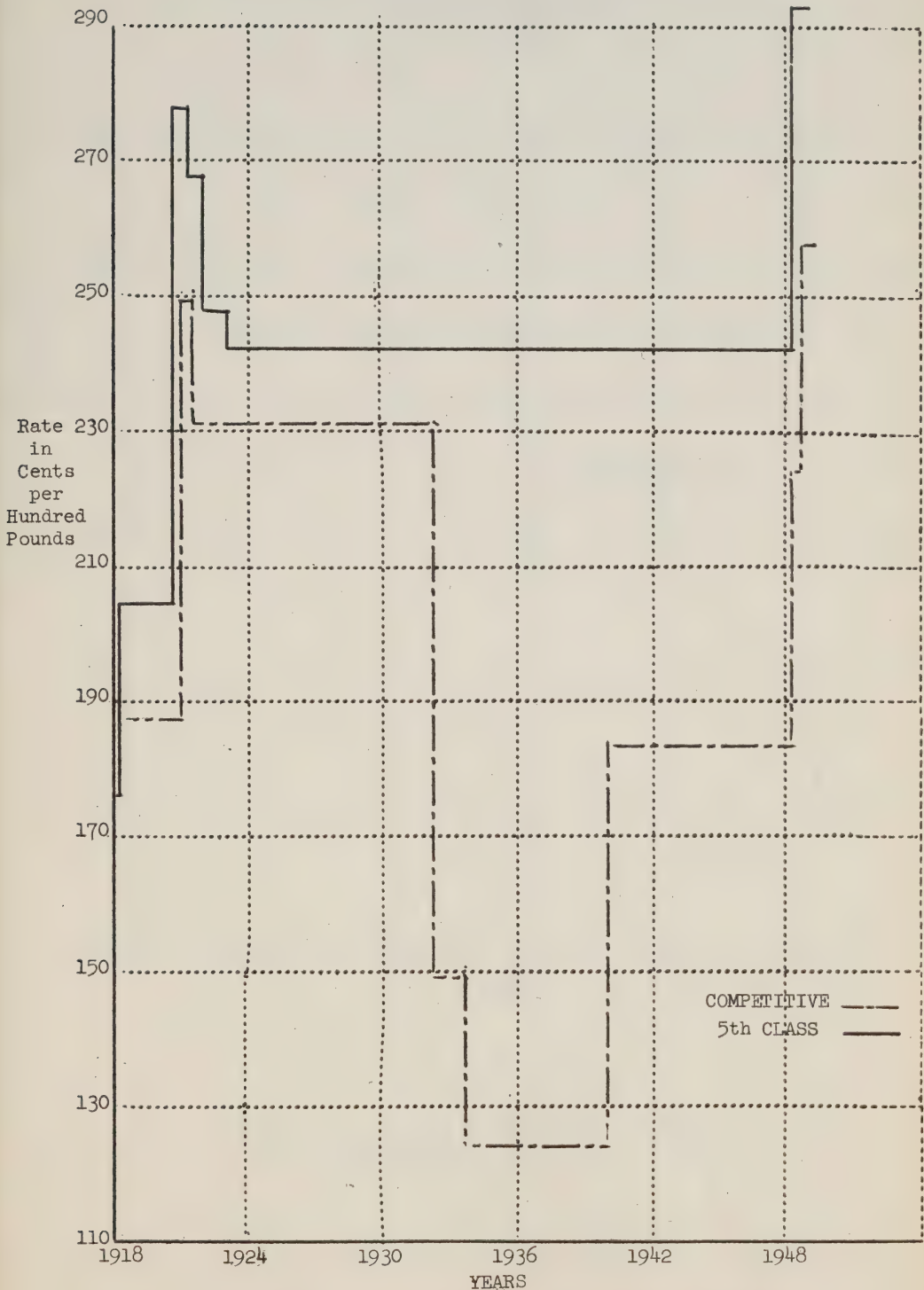
Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on
Dry Goods - Cotton Piece
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 4

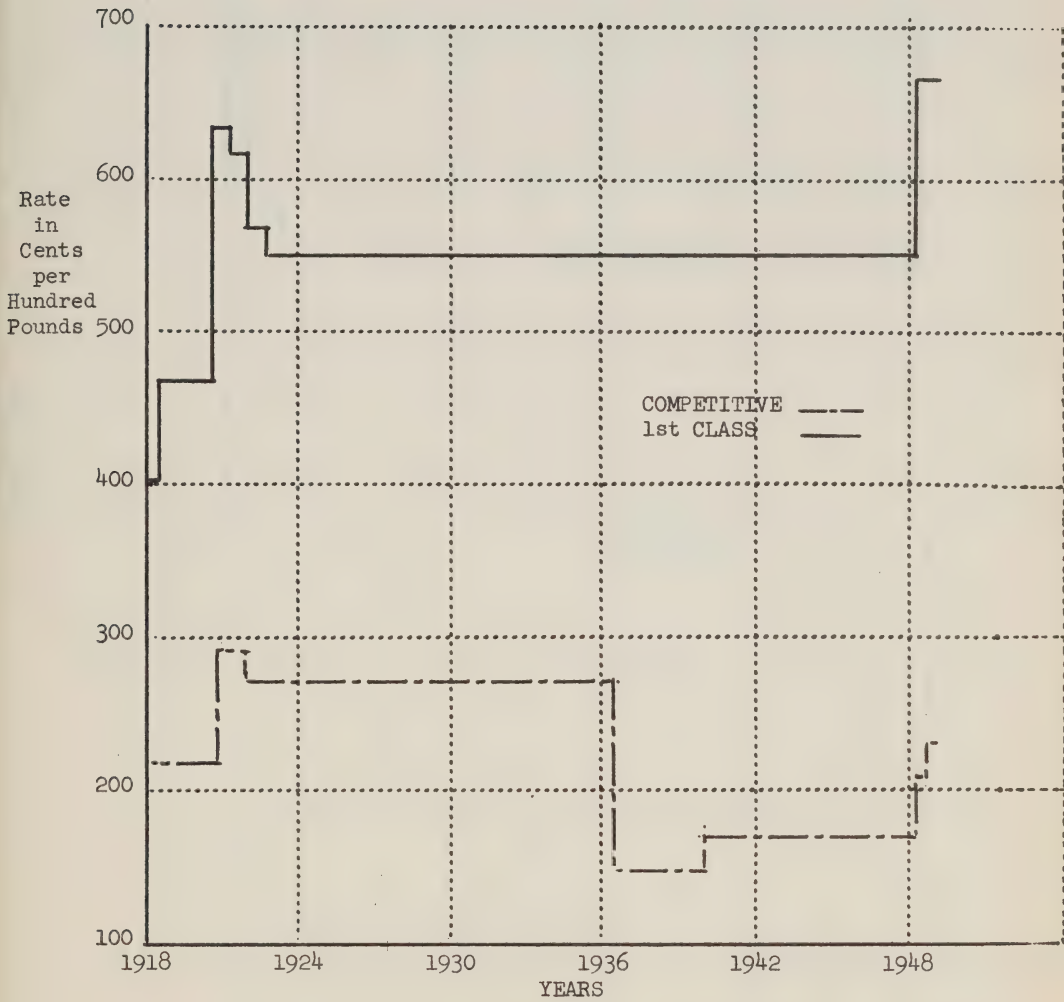
Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on Axes
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 5

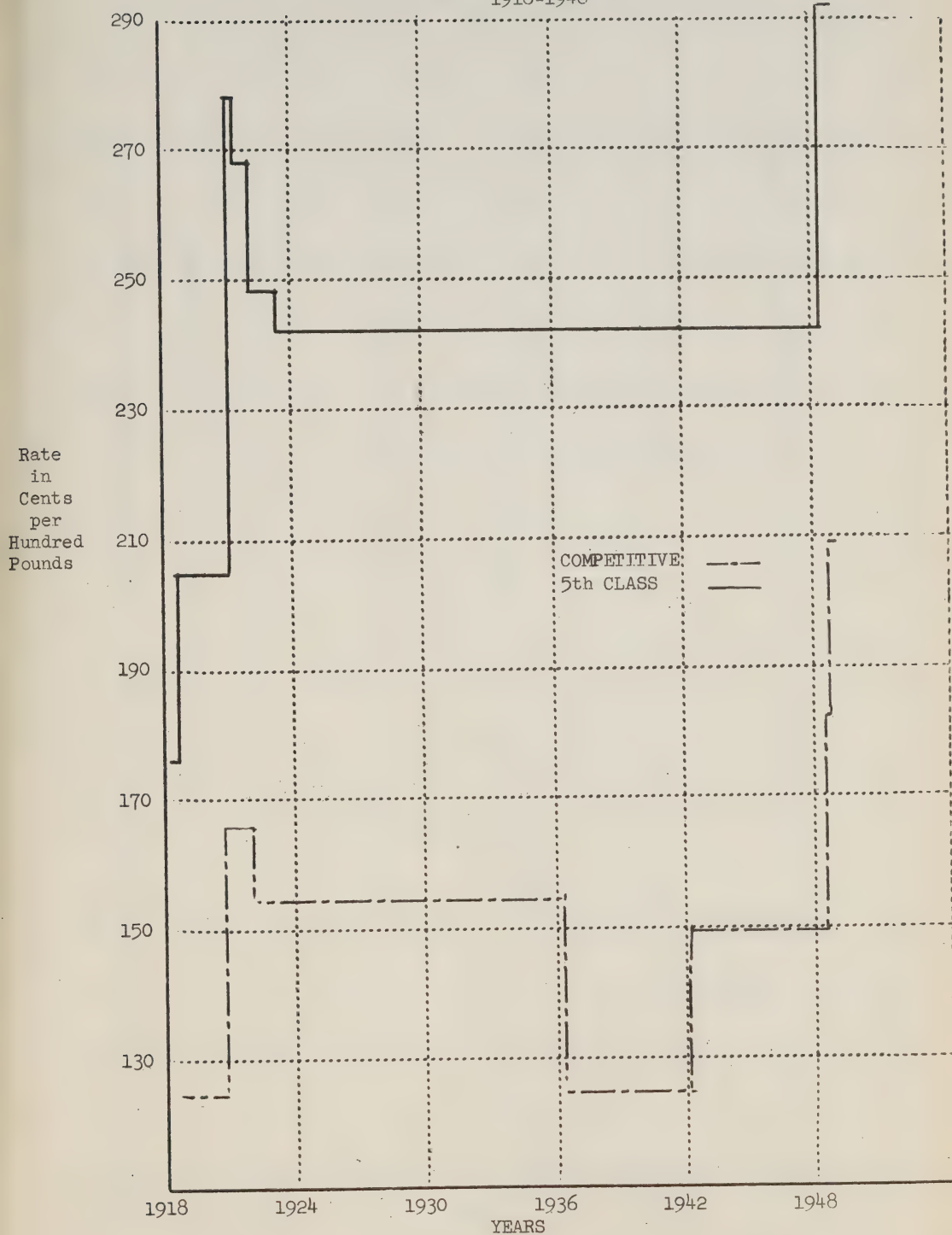
Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on
Dyestuffs, N.O.I.B.N.
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 6

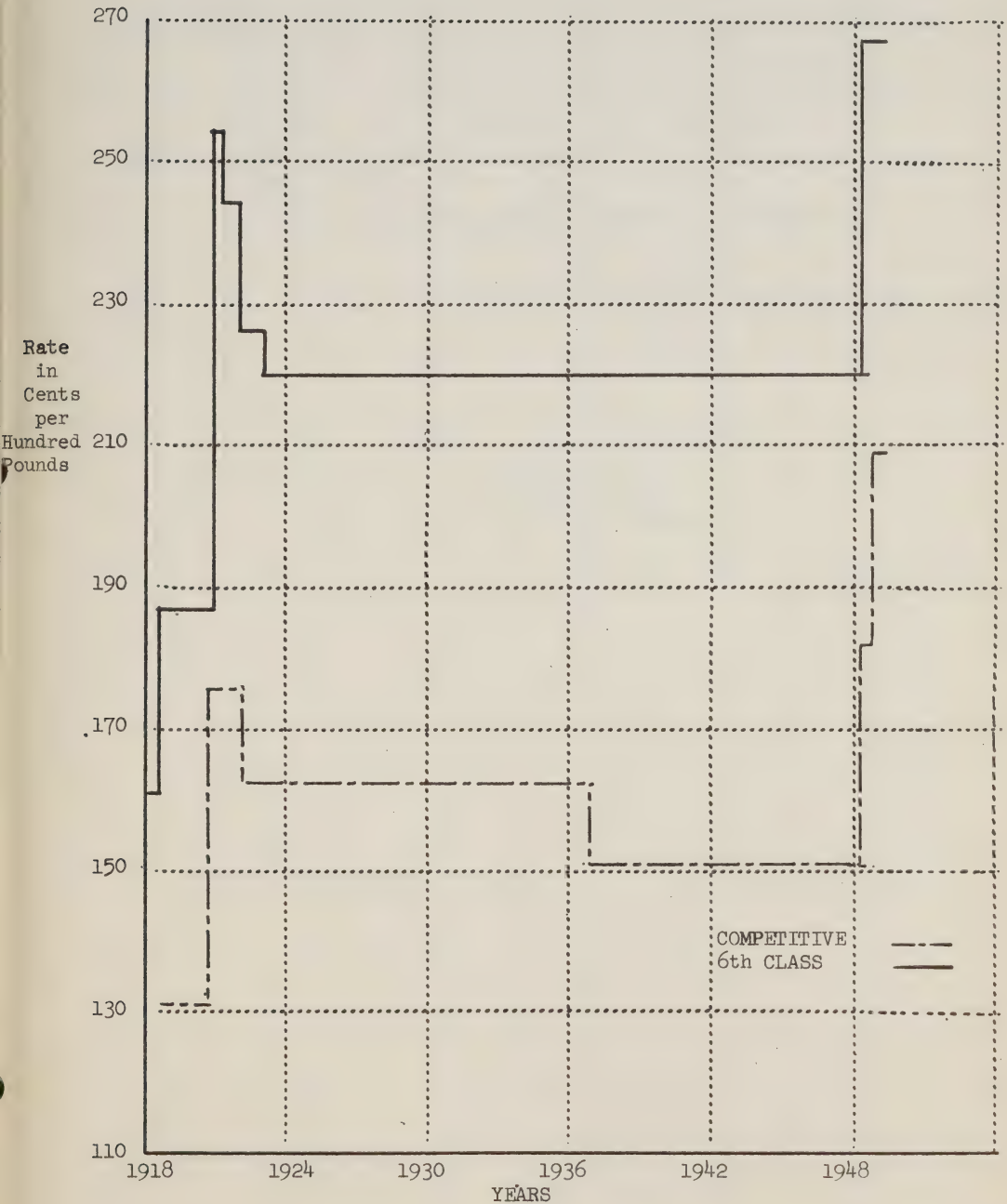
Comparison of the Transcontinental All Rail Class
Rate with the Competitive Commodity
Rate on Barbed Wire
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 7

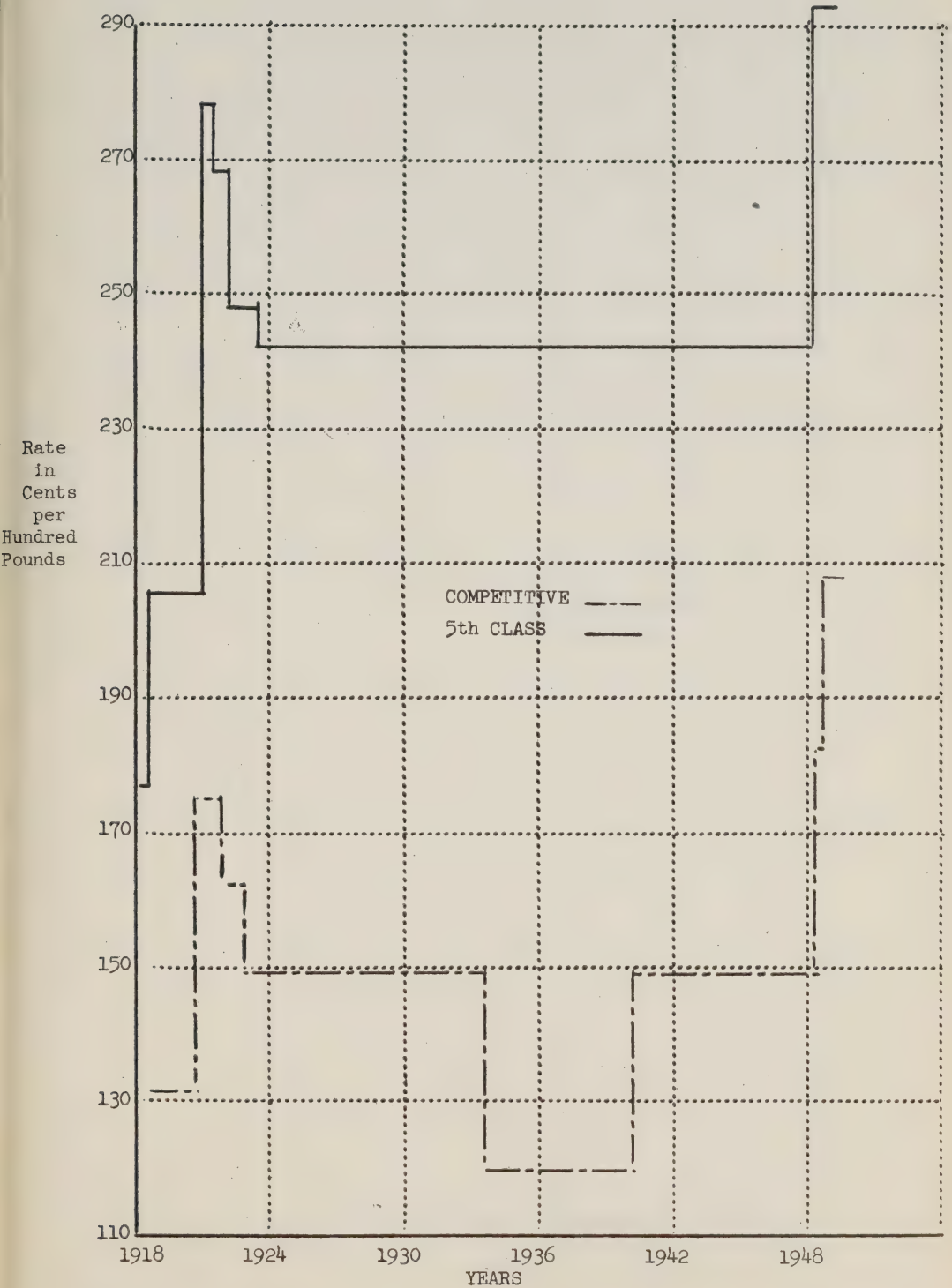
Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on
Structural Iron and Steel Fabricated or Unfabricated
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 8

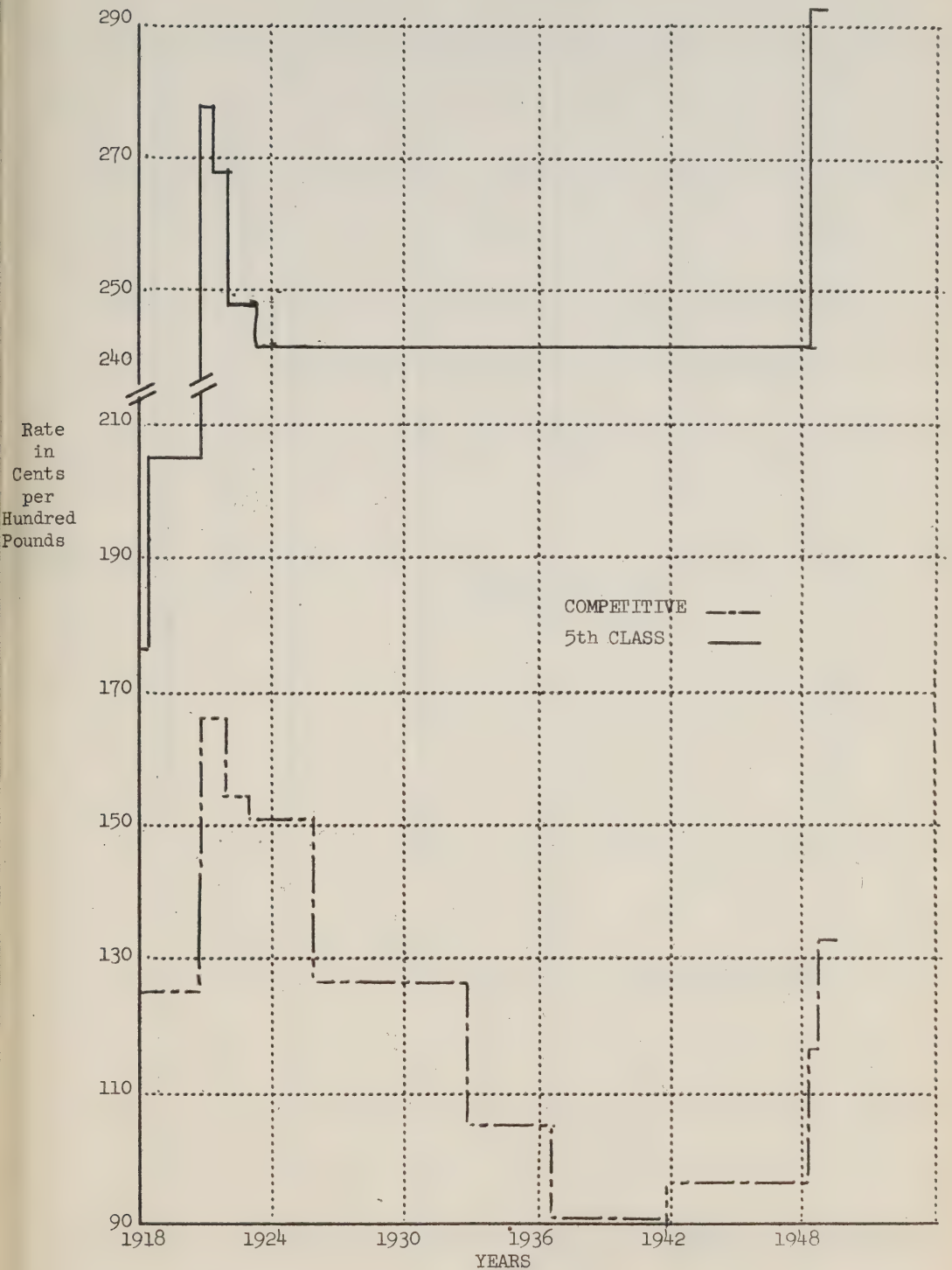
Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on Paper
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 9

Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on
Canned Goods
1918-1948

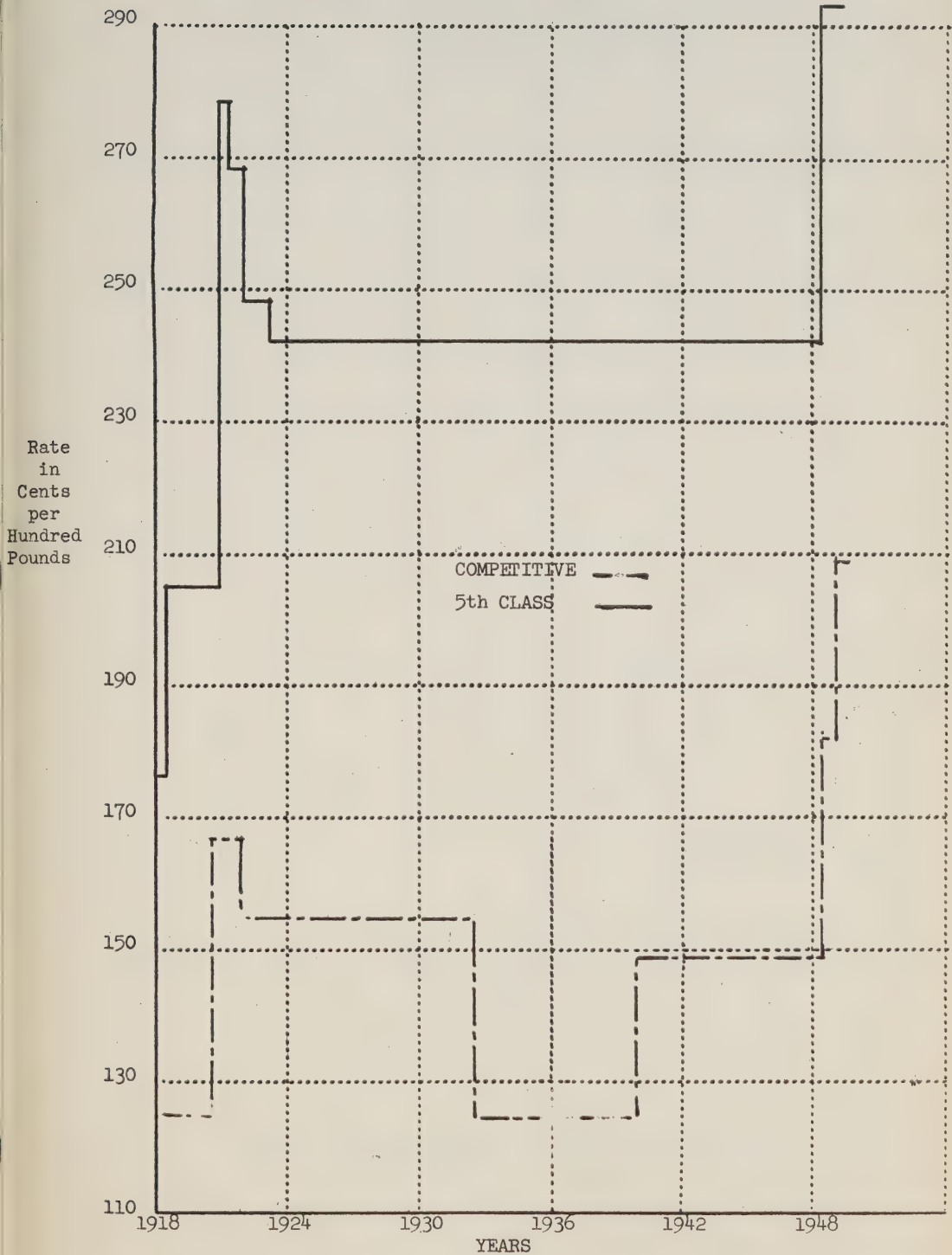


Note: See Appendix A, Schedule 1 for the detail of these rates.

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FIGURE 10

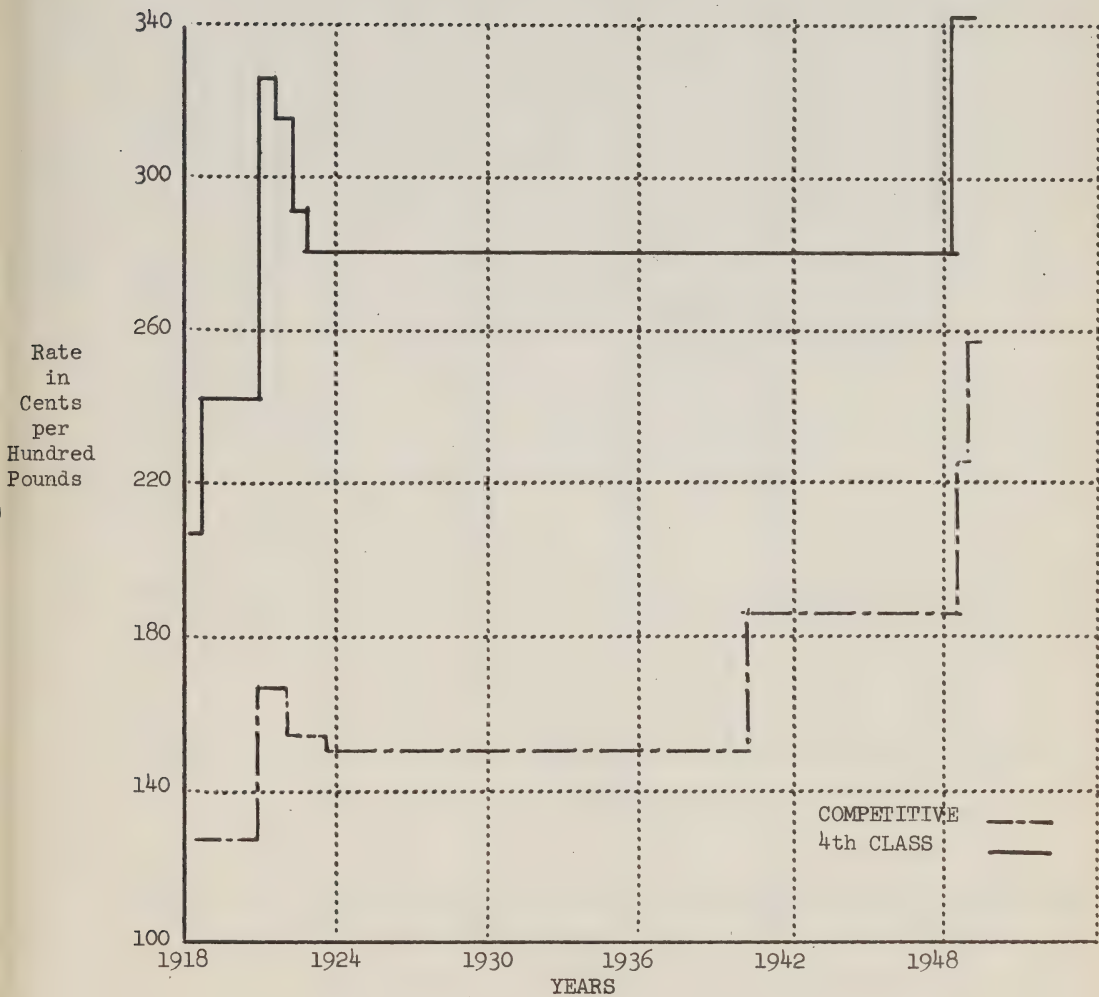
Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on
Red or White Lead for Paint Making
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 11

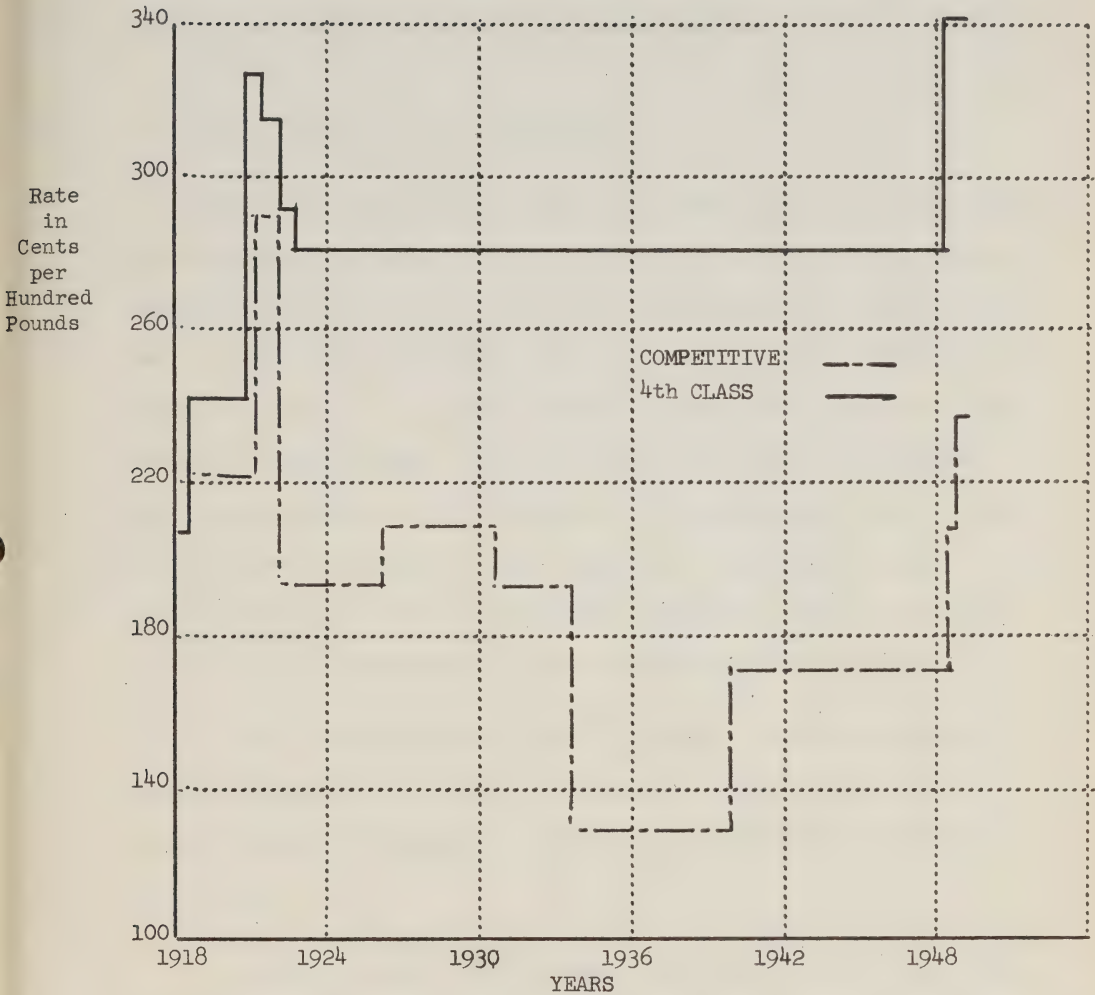
Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on
Builders Hardware, N.O.I.B.N.
1918-1948



Note: See Appendix A, Schedule 1 for the detail of these rates.

FIGURE 12

Comparison of the Transcontinental All Rail Class Rate
with the Competitive Commodity Rate on
Ammonia - Aqua
1918-1948



Note: See Appendix A, Schedule 1. for the detail of these rates.

D. Competitive Factors in Transcontinental Traffic.

With the completion of the first Canadian transcontinental rail road in 1885, the problem of long-and-short-haul discrimination was born. This discrimination resulted from the competition which the Canadian Pacific faced on hauls in either direction across the continent. The competition arose from several sources.

(1) American Railway Competition.

The first transcontinental passage in America was effected in 1869 when a union of the Central Pacific, building eastward from Sacramento, California, and the Union Pacific, building westward from Council Bluffs, Iowa, was made near Ogden, Utah. East of the Mississippi a network of barge, ship and rail lines made direct connections with Upper and Lower Canada, and the Maritimes, while the western terminal of the Central Pacific made connections with shipping that serviced the western coast of North America. Because of the circuitry of this route, and the circuitry of the second transcontinental completed in 1884 by the Santa Fe, very little Canadian traffic moved through the United States.

In 1883 when the Northern Pacific operated its first train into Portland, Oregon, a northern transcontinental route, close to the Canadian border, was completed. In 1887 the Northern Pacific built into Seattle.

It is apparent that from the first the Canadian Pacific was faced with potential competition from American lines. The "monopoly clause" * in the Canadian Pacific Railway agreement initially protected the intermediate rates from American rail competition, but the coast rates in either direction, subject to potential and later to actual competition, were not so protected.

* See Chapter 15 - An Act Respecting the Canadian Pacific Railway, 1881, 44 Victoria 1.

There are several types of traffic on which American carrier competition might exist.

(a) Goods of Canadian origin moving from one point in Canada to another point in Canada.

Goods which are produced in Canada and which move transcontinentally from one point in Canada to another point in Canada can only move on a through rate published by a Canadian carrier. Thus, if a shipment of shoes originating in Toronto is to be moved to Vancouver over predominantly American lines, it can only do so at the same rate that applies on the all-Canadian lines to the same point. (See C.F.A. Tariff 1-H for a list of the participating carriers). This means that in such instances there is no through rate competition between Canadian and foreign carriers.

It would be theoretically possible to bill such a shipment to a point in the United States and then rebill it to the Canadian destination. In that case there would be, in effect, two local rates; or at least one local rate to the United States point and then the American transcontinental rate to the Canadian destination. This combination might be used to defeat the Canadian rate if the Canadian shipment was composed of one of the few items admitted to the United States duty free. On re-entering Canada the goods would be subject to any applicable import duties.

It might be supposed that Section 431 of the Railway Act * would

* "431. All goods carried or being carried over any continuous route, from a point in Canada through a foreign country into Canada, operated by two or more companies whether Canadian or foreign, shall, unless such companies have filed with the Board a joint tariff for such continuous route, be subject upon admission into Canada, to Customs duties, as if such goods were of foreign production and coming into Canada for the first time.

2. Such goods shall be subject to a Customs duty of thirty per centum of the value thereof, if they would not be subject to any Customs duty in case they were of foreign production, and coming into Canada for the first time.

3. If any such duty is paid by the consignor or consignee of such goods, the same shall be repaid on demand to the person so paying, by the company or companies owning or operating so much of such continuous line or route as lies within Canada. 1919 c. 68, s. 431."

offer protection to the shipper and assure him of the lowest rate or combination of rates but such is not the case. In this particular example the fact that there is a through rate via American lines, although this rate is the same as the Canadian charge, makes this section of no consequence.

We may summarize the competitive aspects of this situation by noting that the Canadian through rate could not be higher than the combination of two local rates plus the American and Canadian duty where the shipment is subject to import tariffs. It might also be necessary for the shipment to pay American excise taxes before it could be re-shipped (or exported) to a Canadian destination.

As far as an intermediate point on the transcontinental haul is concerned the same situation applies. If a processor of fruit in St. Catharines, Ontario, wished to use a combination of Canadian and American rates to move canned goods to Calgary, Alberta, for the purpose of defeating the published through rate he would find that the tariff rules do not permit such combinations to be applied. He would also find that the lowest American rates to the Montana border point do not apply on shipments for Canadian points. Restrictions in the tariff rules are responsible for this.

(b) Goods of Canadian origin moving to American markets or goods of American origin moving to Canadian markets.

In this case the lowest transcontinental rate is the controlling one. All carriers in a position to carry the shipment meet that rate. This occurs because the American transcontinental rates name Canadian destinations and the Canadian tariffs name American destinations.

On a movement from Buffalo, N.Y., to Vancouver, B.C., if the lowest rate is the American transcontinental rate, the Canadian carrier would be forced to meet this rate or lose the traffic. It therefore becomes a party to the American tariff. On the other hand,

if the movement is from Toronto to Seattle, the Canadian transcontinental rate applies only if that rate is not higher than the American transcontinental rate.

On nearly all international transcontinental movements it is therefore apparent that the American and Canadian carriers will meet each others rates.

(c) Foreign goods destined to points in either Canada or the United States, and Canadian or American goods destined to foreign ports.

This is essentially the same type of problem as we discussed in (b) above.

These three general classifications of traffic cover the main areas in which American railway competition may operate.

Our chief concern is with the type of long-and-short-haul discrimination arising from movements in the first group, i.e. movements between two Canadian points. In this group we find substantially no rate competition. It is therefore highly unlikely that American competition is an important factor in the creation of long-and-short-haul discrimination in Canada. The effective factor is market competition between American and Canadian sources of supply. If the Canadian transcontinental rates are above the American by an amount sufficient to overcome trade barriers (e.g. tariffs, border costs and etc.) the source of supply for the goods required will shift from the Canadian to the American manufacture (assuming identical costs). To the extent that the American buyer is aware of Canadian sources of supply, the same thing would happen when the reverse rate situation obtained.

(2) Water-carrier Competition.

The competition offered to Canadian railways by American lines is

essentially derived competition. It stems from the existence of American water-compelled rates.

There is an intimate relation between the water competition experienced by American lines, the rates they charge, the rates charged by Canadian carriers on competitive hauls, and long-and-short-haul discrimination in Canada. The American experience is of practical importance and concern.

Water transport is a potent source of competition because;

(a) water rates are usually less than railroad rates, (b) water transport in itself is highly competitive, and (c) it is extremely flexible.

Goods may be classified on the basis of the degree of their susceptibility to water competition: (a) goods which lend themselves to the conditions imposed by the water haul; (b) goods wherein the disadvantages of water movement make necessary a large rate differential between rail and water; (c) goods which for one reason or another do not move by water transport.

Examples of items in the first group are: canned goods, hardware, coal, grain and paper products. In the second we have automobiles, dry goods and high class machinery. The third group contains such things as apples, fresh fish, salt and high quality merchandise.

The water competition experienced by Canadian railways has been of three types: (a) inland and coastwise; (b) intercoastal; (c) trans-ocean.

Inland and coastwise water transport does not have any appreciable effect on transcontinental long-and-short-haul discrimination so we may ignore it here.

Intercoastal competition in Canada is significant at those points

in Central and Eastern Canada touched by navigable water, or near enough to be affected by it, and the coastal area of British Columbia. The extent of water competition on an intercoastal movement is determined by the combined effect of many factors. The most important are:

- (a) the rate from the point of production to the nearest intercoastal steamer port. This rate might be zero; it might be the water or truck-compelled rail charge; or it might be the standard rail charge.
- (b) the actual water rate from the eastern port to the western port (or vice versa).
- (c) incidental charges such as wharfage, insurance etc. which apply on water movements but which are absent on rail traffic.
- (d) the disadvantage of the slower water movement, requiring among other things larger inventories, market timing and price risk.
- (e) extra packaging, extra handling and physical deterioration due to water and temperature.

These are the general considerations involved in the intercoastal competitive picture. It cannot be too strongly emphasized, however, that as far as this competition is concerned there is a unique rate relation existing on almost every movement. As the Chairman of the Intercoastal Steamship Freight Association said in a communication received from him: *

"There is no fixed relationship, percentage or otherwise, between intercoastal and transcontinental rates. This is necessarily so because of the fact that a substantial part of intercoastal business originates in or is destined to points some little distance from the port cities. Obviously, the intercoastal rate has to be less than the all-rail rate if the intercoastal carrier is to secure any business, but the measure of that difference will vary not only with different commodities but upon the point of origin and destination."

* Letter from Harry S. Brown, Chairman, Intercoastal Steamship Freight Association, to H. Harries, Dated March 1, 1949.

On the Canadian scene the institutional aspects of particular trade arrangements are likely to be every bit as important in establishing this relation as are the pure "rate" elements. One cannot, for example, dismiss the fact that in the past an important source of intercoastal carrier competition in Canada has come from boats owned or chartered by British Columbia lumber interests. These ships arriving in the harbours of eastern Canada with a load of lumber are "cargohungry" on the return voyage. It takes a very small rate to compensate them for the trouble of handling manufactured goods under these circumstances.

It might be noted that the tendency to equalize commercial opportunity in the various parts of the eastern industrial area by the formation of large rate groups has also tended to obscure the pattern which one might expect to find in water rates and rail competitive rates.

Trans-ocean transport directly exerts a negligible influence on the transcontinental rate structure. If the choice is one of publishing a rail rate which will discourage the shipment of goods by direct sea route as opposed to landing the goods at the nearest continental gateway and using the railway, then the railways are simply not in the competitive picture. The idea previously discussed in connection with American railroad competition and the export and import traffic is persuasive here.

The indirect effect of trans-ocean transport is felt in the transcontinental rate structure. The competition which exists between domestic manufacturers and overseas manufacturers in the western market has resulted in lowering transcontinental railway charges. This is plain market competition and the extent to which it has been a factor we

are not able to say. It may be noted, however, that the calculations required to intelligently appraise the rate requirements of the domestic manufacturers would be exceedingly complex, including as they would, processing, shipping and distribution costs on and from two continents.

The foregoing discussion, which has detailed the general competitive factors operating on transcontinental haulage, is the context within which particular competitive influences must be studied.

The competitive factors in transcontinental traffic appear to fall historically into three distinct periods. We may now discuss these.

(1) Prior to the Operation of the Panama Canal 1869 to 1917.

We have previously indicated that early in the economic life of the dominion there was potential American railroad competition. This competition became actual with the growth of the Midwest and development of the Pacific Coast.

The conditioning competitive factor in this early period was the cost of intercoastal movement via ocean-rail-and-ocean over Central America or the ocean voyage via Cape Horn. Although this route might not be considered a potent source of competition it must be remembered that in this early period the level of American railway rates relative to ship rates was very high. It was the period of grand development in the matter of land transport. The outlay was enormous by nineteenth century standards and rates were set to service this capital cost. It was also the period during which there was no effective long-and-short-haul rule operative in the United States. All this had the effect of producing exceedingly low rates at water-competitive points.

The same thing was true of our Canadian lines where in many instances the mileage rates were even higher than the American, and consequently the stations at which competition impinged enjoyed a

relatively lower rate than similar American points.

Local discrimination was rampant during the early years of this period because the salutary effect of a comprehensive regulatory system had not found time to exert itself. As far as the Canadian trans-continental rates prior to 1918 were concerned they were related to the American charges. Direct intercoastal water competition between Canadian ports was not a factor of consequence but ocean rates did have an effect as a result of market competition as we have previously indicated.

The competition of American intercoastal carriers carrying Canadian goods was also effectively throttled by the inaction of the Government of Canada. The evidence presented by the Vancouver Board of Trade in the Fifteen Percent Increase Case (1917) 7 J.O.R.R. 411 is of interest here. Mr. Shullcross, British Columbia counsel, is quoted as follows at page 418:

"To a very substantial extent the freight charged the people of Vancouver by the railways emanates from eastern seaports or adjacent points. An increase of 15 percent from these points would probably not be urged by the railway companies if the people of Vancouver were permitted to make use of the Panama canal. As the Board is no doubt aware, this waterway can only be used by the residents of the Canadian Pacific coast with the consent of the Dominion Government, by which we mean the appointment of a Canadian customs officer at New York. That this appointment be made, has been requested by the Board of Trade on many occasions, and as many times denied, by the Dominion Government."

2. Competition from 1918 to 1940.

With the successful completion of the Panama Canal a new and shorter route for intercoastal traffic was opened. The effect of the competition thus introduced fell with greatest force upon Western Canada. As we will point out later, unlike non-competitive areas in the United States which now had the substantial protection of an effective long-and-short-haul rule, Prairie territory was accorded none of the advantages that improved water transport made available. On the contrary, Prairie territory became the one

remaining area on the North American continent where standard rates on long-haul traffic could be imposed with any degree of success. At a time when American railroad competition, which in the earlier period had conditioned our transcontinental rates, was showing signs of diminished effectiveness, water competition not heretofore effective between Canadian intercoastal points was entering the picture. As if to make certain that this water competition would be effective the Government of Canada established a ship service between the coasts of Canada.

With the conclusion of World War I, during which intercoastal water movements had practically ceased, there was no sudden revival of the intercoastal trade although a tremendous interest in that trade was evident. A number of shipping companies inaugurated services but because of high charter rates and the inherent instability of that type of carriage those services were all short-lived. It was not until 1921 that any traffic volume developed and even then the difficulty of soliciting cargo and the low level of rates (usually 25 per cent under the rail charge) served to force near-bankruptcy on the participating intercoastal carriers. Had it not been for the entrance of subsidized Government shipping into the intercoastal trade it is highly unlikely that water competition would have been as important.

The Government of Canada had acquired a merchant fleet during the war and at its conclusion, as a result of a new "national sentiment", and as a result of British Commonwealth policy, it was decided to increase this fleet and enter into the world carrying trade. For several years this activity, conducted as the Canadian Government Merchant Marine, was a distinct success, but by 1922 deficits began to appear. These deficits continued to mar the financial success of the venture until its termination in the middle thirties.

In spite of the unsuccessful nature of the ocean services already instituted, an intercoastal trade was started in 1923 by the Government of Canada. Regular monthly sailings from Montreal or Halifax and Vancouver were scheduled, and a determined effort was made to obtain traffic. The Government of Canada, operating a shipping service that was considered to be the marine arm of the Canadian National Railways, and which was heavily subsidized, did most of the pioneering work in our intercoastal trade.

The Canadian Transport Company (commonly called the Vancouver-St. Lawrence Line) a subsidiary of H.R. McMillan Ltd., in order to find a market for Pacific lumber through Eastern Canadian outlets, undertook the intercoastal service left vacant by the Government's withdrawal in 1932. They went out on the market and chartered vessels from British, Danish, Norwegian and other owners. With an established west to east business in lumber they had assured one-way traffic and consequently they made a determined effort to acquire general cargo for the east to west haul.

One of their vice-presidents was sent to Montreal where, with a group of traffic solicitors, he sought business. A traffic arrangement was established with the Furness Withy Company and a further arrangement was made with Canada Steamship Lines, to bring traffic down the lakes to Montreal for trans-shipment into larger vessels.

The extent to which boat competition was significant during this period is apparent from Figures 13 and 14 which detail the intercoastal movement.

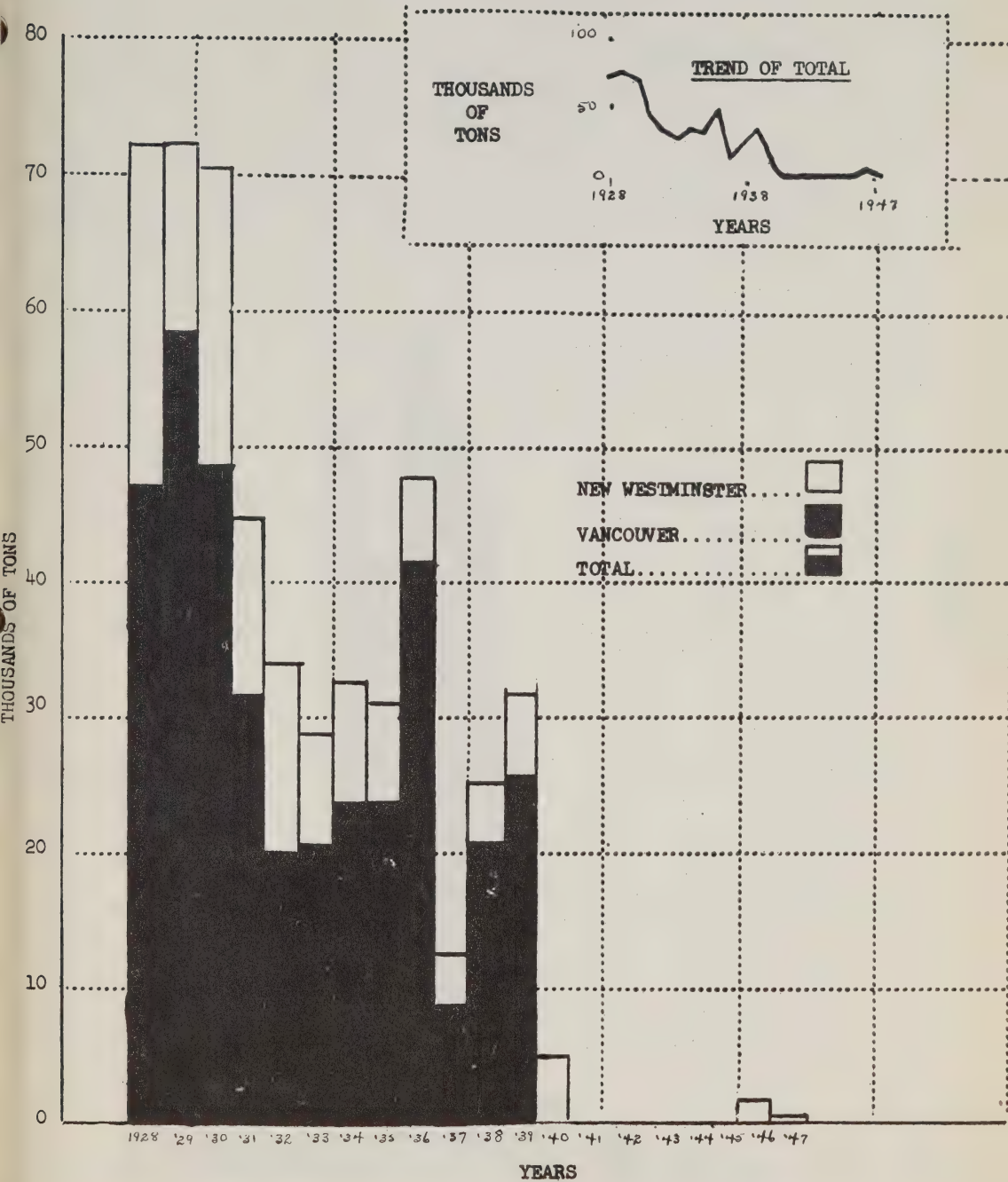
Turning to the American railroad situation during the period from 1918 to 1940 we find that with the enforcement of the long-and-short-haul rule and the revision of the transcontinental rates

the ability of the American carries to freely adjust their transcontinental rate structure was qualified. This tended to keep the American port rates at a higher level than might have obtained in the absence of such regulation, thus beneficially affecting the Canadian railroads on transcontinental hauls.

This period also included the depression era which brought with it a smaller traffic volume and near financial chaos in the American lines. These factors had a strong influence upon railroad competition.

FIGURE 13

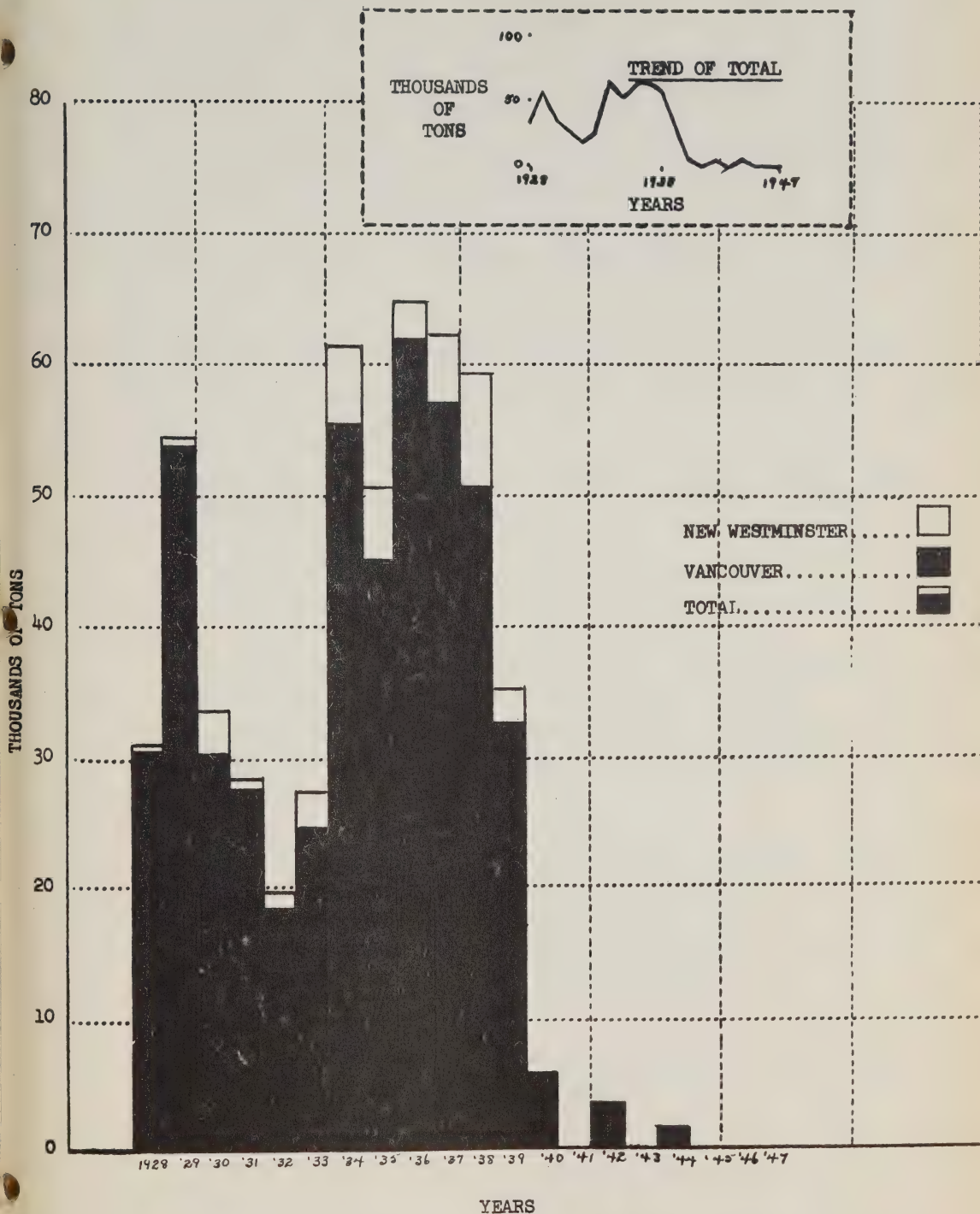
INTERCOASTAL TRAFFIC TO EASTERN CANADA FROM
VANCOUVER AND NEW WESTMINSTER 1928 - 1947
(THOUSANDS OF TONS)



Source: Harbour Commissioners of New Westminster and Vancouver.

FIGURE 14

INTERCOASTAL TRAFFIC FROM EASTERN CANADA TO
VANCOUVER AND NEW WESTMINSTER 1928 - 1947
(THOUSANDS OF TONS)



Source: Harbour Commissioners of New Westminster and Vancouver.

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(3) Competition from 1940 to 1948

With the advent of war in 1939 the competitive situation on trans-continental traffic was drastically altered. The ships which were plying the Canadian intercoastal route were almost immediately withdrawn. By the beginning of 1940 water lines had ceased to be a competitive factor as Figures 13 and 14 indicate. By 1941 the ships engaged in the American intercoastal hauls had also ceased to be a competitive factor.*

With the decline of competition on intercoastal traffic in 1939 some alterations were made in the transcontinental competitive commodity tariffs. In general these changes were insignificant. During the Thirty Per-cent Case Counsel for the Canadian Pacific Railway said at pages 11637 and the following, Transcript of Proceedings:

"That between Sept. 1, 1939, and January 1, 1941, 129 carload items and 105 less than carload items have been increased." (page 11640)

On January 20, 1942, the Wartime Prices and Trade Board issued Order No. 92 which virtually froze the existing rail rates. From that date to

* See the findings of Examiner Frank M. Weaver in Reichhold Chemicals Inc. v. Grand Trunk et. al. File No. 29847, October, 1948.

** Wartime Prices and Trade Board Order Number 92 dated the 20th of January, 1942, made pursuant to authority conferred by Orders-In-Council P.C. 8527 and P.C. 8528, dated the first of November, 1941:

- "(1) In this order the expression rate means any rate or other charge whether described as freight rate, express rate, passenger fare or otherwise made for the transportation of goods or persons by rail.
- (2) Unless with the approval of the Board of Transport Commissioners for Canada and the written concurrence of the Wartime Prices and Trade Board, no person shall during any period of the year charge any rate higher than the corresponding rate charged during the same period of the year 1941.
- (3) Rates without further application may be higher than those charged during the basic period referred to in the maximum price regulation provided they conform to the requirements of Section 2 of this Order."

Note also C.N.R. v. Halifax Fisheries Ltd., 56 C.R.C. 134 re W.P.T.B. Order 92.

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April 8, 1948, the only revisions made in the transcontinental rates were reductions. Appendix B, Schedule 2, attached hereto lists these reductions which were made in the complete absence of carrier competition.

On April 8, 1948, pursuant to Order 70425 of the Board of Transport Commissioners, the transcontinental competitive commodity rates, in common with most other rates, were increased by 21 per cent. On a fifth class rate this meant that the absolute increase on the transcontinental haul was 51 cents. The absolute increase on a typical commodity rate, that applying on paper, was 32 cents.

Again on September 15, 1948, the transcontinental competitive commodity rates were increased by 15 per cent as were most other competitive rates.

In summary we may note that during the ten years, 1939 to 1948,
*
when water competition was absent the transcontinental competitive

* At page 6075, Volume 754 of the Transcript of Evidence in the Thirty Percent Case this interesting exchange is recorded during cross-examination of Mr. Knowles.

"Mr. McLEAN: Q--Do you think there are a number of rates in force today which were based upon water competition which is no longer a potential threat? A--Yes sir.

Q--There are a lot of rates that are? A--Yes sir, and the principal ones are the transcontinental ones from east to west.

Mr. O'DONNELL: Q--The Panama Canal? A--Yes.

Mr. McLEAN: Q--Suppose you put them up, would that drive business to the boats? A--There are no boat lines operating between Eastern Canada and the Pacific Coast today.

THE CHIEF COMMISSIONER: Q--Is there anything through the Panama Canal now? A--The Vancouver-St. Lawrence Line has not been operating boats for a number of years through the Panama Canal; and the Manager told me a few weeks ago that he doubted if the line would be restored for a long time to come on account of the operating costs."

commodity rates aside from one general increase of 15 per cent were not substantially altered. There was no substantial alteration in spite of the fact that their continued existence created on abnoxious form of local discrimination at many points between Winnipeg and Vancouver on hundreds of commodities.

E. The Extent and Effect of Long-and-Short-Haul Discrimination at Intermediate Points.

The long-and-short-haul discrimination which is created as a result of transcontinental competitive commodity rate structure bears most heavily upon the Province of Alberta. This Province, situated in non-competitive territory where it is without the ameliorative effects of American railway competition, is practically in the complete bondage of Canadian rates.

For the consideration of the Commission we have compiled a list of all commodities which violate the long-and-short-haul rule to the extent that the transcontinental rate is not equalized by the lowest intermediate rate until a station at, or east of, Calgary or Edmonton, Alberta, is reached. This list is now offered as an Exhibit. We have made an extract of some representative rates in this exhibit which appear in Table 2 following:

The exhibit gives a picture of the situation as it existed in July, 1948; that is, it includes the general increase of 21 per cent but does not include any subsequent increases. The list is as complete a calculation as can be made of the extent of the long-and-short-haul discrimination which existed in Alberta as of that date. In many respects the list is conservative because in July, 1948, the general transcontinental rate level was higher than it had been for twenty years. The picture during much of those twenty years was infinitely worse as far as Alberta was concerned.

A perusal of the list will disclose that it contains many important Alberta imports. Iron and steel goods, chemicals and drugs, clothing, hardware, canned foodstuffs and paper are fully represented. From an analysis of Railway Traffic Reports prepared by the Dominion Bureau of Statistics it appears that these general items constitute not less than 25 per cent of the total traffic moving into Alberta from the east.

In terms of the number of items in this list we calculate that they constitute 15 per cent of all the commodities contained in the Canadian Freight Classification with suitable allowances for duplication.

Another observation in connection with this list is that it contains many items which do not carry a commodity rate into Western Canada. This means that the long-and-short-haul discrimination is maximized in many instances.

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TABLE 2 (REVISED)

Certain Selected Commodity Items from
Exhibit Illustrating the Extent of
Long-and-Short-Haul Violations in Alberta.

COMMODITY	FROM	RATE TO VANCOUVER C.F.A.L-H	RATE TO CALGARY	STATIONS AT WHICH RATES TO VANCOUVER ARE EQUALLED	
Alumina, Sulphate of	C/L Arvide, Que.	182	254	Hargrave, Man.	182
	Valley, Que.	167	240	Elkhorn, Man.	167
Cores, Paper Winding C/L	Three Rivers, Que	189	240	Regina, Sask.	188
Copper, Sulphate of C/L	Montreal	127	240	Scovil, Ont.	127
Insulating Material	Halifax, N.S.	220	292	Percival, Sask.	219
Eel Grass C/L	Lockeport N.S.	236	307	Percival, Sask.	234
Litharge, Lead, White or Red, Zinc Oxide C/L	A & B	151	240	MacGregor, Man.	151
	CAP de le MADELEINE	159	247	MacGregor, Man.	159
Rock Phosphate (ground) C/L	Montreal	121	161	Sintaluta, Sask.	121
Bisal Fibre C/L	A & B	157	240	Chater, Man.	159
Lamp outfits Christmas tree	A & B	LCL 726 C/L 375	822 AQ	Bonheur, Ont.	375 A.Q
Gums or Resins Synthetic LCL	A & B	433	548	Regina, Sask.	433
Wool, in grease, in bales or sacks wool scoured C/L	A & B	186	240	Regina, Sask.	188
Cable, Aluminum, Plain or with steel core, not insulated C/L	Montreal, Que. Shawinigan Falls Que.	218	282	Sintaluta, Sask.	217
Frit Enamel in bags C/L	Oakville, Ont.	184	240	McLean, Sask.	184

COMMODITY	FROM	RATE TO VANCOUVER C.F.A. 1-H	RATE TO CALGARY	STATIONS AT WHICH RATES TO VANCOUVER ARE EQUALLED
Corn, Corn sugar	Cardinal, Ont.			
Corn Syrup & Corn	Port Credit, Ont.	133	240	Ingolf, Ont. 131
Oil C/L	Group T	145	247	Winnipeg, Man. 145
Fish or Sea Animal				
C/L	A & B	91	240	Rate to all Points West of Fort William exceeds rate to Vancouver
Vegetable, Fish	London, Ont.	151	240	MacGregor, Man. 151
sea animal other				
an edible or medi-				
cal C/L				
arch, C/L	London, Ont.	145	240	Reaburn, Man. 145
ass, dried, ground	A & B	121	144	McLean, Sask. 121
bags C/L				
ice, Grape, unfermented	A & B	133	282	Bonheur, Ont. 131
ice, lime C/L	T	149	292	Butler, Ont. 148
lasses in tank cars	Chatham, Ont.			
C/L	Montreal, Que.	121	240	Eagle River, Ont. 120
	Wallaceburg, Ont.			
da, Sodium, or Silicate	A & B	91	143	Reaburn, Man. 92
C/L				
iler Heads (Combustion	Montreal	200	240	Uren, Sask. 200
amber Heads) C/L				
rn, Seed C/L	Blenheim, Ont.	109	144	Brandon, Man. 108
ttton, Raw C/L	A & B	206	240	Swift Current, Sask. 207
edge Buckets C/L	Sorel, Que.	182	247	Percival, Sask. 182
umber, Mahogany C/L	Toronto	149	217	Elkhorn, Man. 148

COMMODITY	FROM	RATE TO VANCOUVER C.F.A 1-H	RATE TO CALGARY	STATIONS AT WHICH RATES TO VANCOUVER ARE EQUALLED.	
Lumber, etc. Staves, heading & hoops, hardwood C/L	A & B	111	143	Sintaluta, Sask.	110
Starch, Corn C/L	Cardinal, Ont. to James Island	155	240	Melbourne, Man.	155
Tires, R.R.	Montreal (a) 221 (b) 182		240	Sintaluta, Sask.	182
(a) Min. 36000 lbs. (b) Min. 60000 lbs.					
Veneer, C/L	St. John, N.B.	143	167	Webb, Sask.	143
Ale, Beer, Porter, Carbonated Beverages & Mineral Water	A & B	206	240	Swift Current, Sask.	207
Bathroom Cabinets Steel LCL	A & B	424	548	McLean, Sask.	426
Beans, Vanilla in metal cans in boxes - L.C.L.	A & B	532	1096	Raleigh, Ont.	532
Cabinets, Dentists or Surgeons Instruments or Supply LCL	A & B	668	822	Boharm, Sask.	669
Cameras, Moving Pictures Projectors & Carrying cases LCL	A & B	741	1096	Alexander, Man.	740
Cloth, Gummed, in boxes F L.C.L.		454	563	Belle Plaine, Sask.	455
Cocoanut, Prepared C/L	A & B	182	282	MacGregor, Man.	182
Coffee & Coffee Sub- stitute; Coffee, green, ground or roasted. Coffee sub. C/L	A & B	169	240	Kerkella, Man.	169
Compounds, Anti-freeze C/L	A & B	182	240	Sintaluta, Sask.	182

COMMODITY	FROM	RATE TO VANCOUVER CFA 1-H	RATE TO CALGARY	STATIONS AT WHICH RATES TO VANCOUVER ARE EQUALLED	
Furniture, casters C/L	A & B	224	282	Regina, Sask.	224
Cobbler's outfits	A & B LCL	424	455	Medicine Hat, Alta.	422
	C/L	224	240	Suffield, Alta.	225
Traps, Animal NOIBN Steel C/L	A & B	224	282	Regina, Sask.	224
Abrasives, paper coated with abrasive material LCL	A & B	363	367	Dalemead, Alta.	363
Blacksmith's machinery	A & B	224	240	Suffield, Alta.	225
Range Boilers, other than electric, steel C/L	A & B	224	282	Regina, Sask.	224

The exhibit indicates that on a substantial number of items the Alberta resident pays a higher freight charge than the British Columbia consumer. In a real sense the differential that exists between these charges may be considered as an extra contribution made by the Alberta resident to transportation overhead.

In 1938 the Edmonton Chamber of Commerce submitted the following evidence to the Rowell-Sirois Commission regarding the increased cost that this differential imposed upon the Alberta consumer. They said in part at page 6 of their supplementary brief:

"Consider the cost of canned tomatoes, corn and peas... If the (Vancouver rate) applied to Alberta shipments tomatoes would be reduced about 3¢ per tin and corn and peas about 2¢ per tin.

"An ordinary galvanized stock tank that sells to the farmer at about \$12.50 would be reduced \$1.00 if Alberta farmers had the same freight rate as B.C. farmers. The same proportionate reductions would be made on stove pipes and dozens of other steel products.

"Do you realize that 26% of the cost of eave troughs and conductor pipe is transportation cost? If we had the Vancouver rate the transportation cost would be only 11%."

In addition to the absolute burden that long-and-short-haul discrimination imposes upon Alberta the relative position of certain

business interests in this Province must be considered.

In 1938 the Edmonton Chamber of Commerce in a supplementary brief to the Rowell-Sirois Commission said at page 3 that:

"(Barbed wire) can be delivered in Edson, Alberta, via Vancouver for a total transportation cost of Montreal-to-Vancouver 75¢ plus L.C.L. Vancouver-to-Edson of \$1.13 or a total of \$1.88. If distributed from Edmonton the rates are Montreal-to-Edmonton \$1.98 plus L.C.L., Edmonton-to-Edson of 35¢ or a total of \$2.33. This is an excess charge if distributed from Edmonton of 35¢ per cwt., and the distance the railways haul this merchandise is 1410 miles less. This item can be shipped to Wainwright, Alberta, 135 miles east of Edmonton for 20¢ per cwt. less if distributed from Vancouver rather than from Edmonton.....This is an excess of 1580 miles....."

There were a number of other commodities which reacted to the rates in a similar fashion. In each case the difficulty and even the absolute impossibility, of the Alberta wholesaler doing business in territory adjacent to his own location was apparent.

In 1947 the situation with regard to certain transcontinental competitive commodity rates had altered but the fundamental disability of these rates remained. The Government of Alberta said in the Brief presented to the Board of Transport Commissioners in the 30 percent case, (Vo. 769 - Transcript of Evidence, at page 11473 etc.):

"Schedule 12 indicates the disadvantage to Alberta of existing transcontinental rates and in particular demonstrates the disabilities suffered by our distributing centres in areas logically tributary to them. A comparison of the cost of distributing goods shipped from Eastern Canada to certain British Columbia interior points from Calgary and Vancouver respectively indicates that although the distance via Vancouver to the points given ranges from 24 to 34 per cent greater, the transcontinental rates enable Vancouver distributors to reach interior points that are nearer to Calgary at rates substantially below those that must be paid by Calgary distributors. The proposed increase would further restrict the markets of Alberta distributors in this area by increasing the differentials in favour of Vancouver.

"Schedule 26 describes what is probably the extreme case of the spread between the low competitive rate from Eastern Canada to the Pacific Coast and the comparable rate to Alberta points. Canned goods can be shipped from Toronto to Vancouver at the transcontinental commodity rate and re-shipped back to Edmonton.

at a combined rate of \$1.94 per cwt., compared to the direct Toronto-Edmonton quoted rate of \$1.98 per cwt. The rate to Vancouver is less than 50 per cent of the Edmonton rate to begin with and this difference between the two rates is sufficient to extend the back-haul territory from Vancouver to Edmonton, a distance of 765 miles. The total additional haul which the railways would be obliged to perform at no extra charge, if the shipment were rebilled at Vancouver, is 1,530 miles, most of which is through Mountain territory where operating costs are alleged to require the application of the higher rates of the Mountain Differential."

At the Edmonton and Calgary hearings of this Commission several representative distributors appeared under the auspices of the Boards of Trade to present evidence in connection with Long and Short Haul discrimination on certain items of particular concern to them.

Mr. H. V. Lewis, a director and traffic manager of Louis Petrie Ltd., a Calgary wholesale grocer, said: (page 1494 of the Transcript)

"Just about our sorest point is the advantage enjoyed by Vancouver in the transcontinental rate. Rates from Eastern Canada to Alberta have as their maximum the rate to Vancouver plus the back-haul and some of them are very close or even in certain circumstances have to be reduced. We feel that it is grossly unfair that we should have to pay the cost of a double haul across the mountains on our purchases in the East. South of the border the situation is different and our purchases in Eastern states move at a transcontinental rate plus local from the border as shown above. We think the rates should be altered to no more than the rate from comparable U.S. points."

Mr. B. Bowlen, Secretary of the Alberta Co-operative Union, said in his Brief: (pages 1499 and 1500 of the Transcript)

"As wholesalers, interested in the distribution of food products canned in Eastern Canada, we wish to draw your attention to the problems created by the so-called Panama Canal competitive rates to Vancouver. Suppose we wished to order a carload of canned tomatoes from Aylmer, Ontario. We would be assessed a charge of \$2.40 per cwt. or a total charge of \$1,440.00. A Vancouver wholesaler could get a similar shipment at a cost of \$1.37 per cwt. or at a total charge of \$822.00. In other words, a Vancouver wholesaler pays approximately half the freight charge that we do and yet receives service for an additional 750 miles. This is only one part of the problem however. With these low coast rates in existence, a Vancouver wholesaler could actually distribute that carload of tomatoes all the way back into the Western part of Alberta. You can appreciate that absolutely and relatively, therefore, we are placed in a most disadvantageous position."

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Mr. J. H. Harvey, a director and Assistant Manager of Brock Company (Western) Limited, submitted that: (pages 1502 and 1503 of the Transcript)

"The following rates are in existence today, showing a comparison between Montreal to Vancouver and Montreal to Calgary:

	<u>Montreal to Vancouver</u>	<u>Montreal to Calgary</u>	<u>Vancouver to Calgary</u>
Linoleum in carload	2.23	2.40	(1.19) *
Cotton Piece Goods in carload	2.44	2.82	(1.33) *
Flannelette Blankets included in Cotton Piece Goods car to Vancouver only	2.44		
Flannelette Blankets		5.48	2.65

"From this table it is apparent that Flannelette Blankets, which originate at Montreal, can be laid down in Vancouver at a rate of \$2.44 per cwt. because they are carried in a mixed car of Cotton Piece Goods. The same Blankets moving from Montreal to Calgary would go at a rate of \$5.48 per cwt.

"To get the same commodity in our warehouse in Calgary, it costs us exactly \$3.04 more per cwt. than it costs the Vancouver wholesaler. When you stop to consider that those same Blankets can be moved from Vancouver back to Calgary at a rate of \$2.65 per cwt. you can realize the competitive situation in which we find ourselves on this item."

Mr. C. W. Carry, appearing in Edmonton on behalf of C. W. Carry Ltd. said: (page 2061 of the Transcript)

"Our rate on structural steel from Sault Ste. Marie, Ontario, to Edmonton is a 6th class rate of \$2.17, while the same product travels right past our doors into Vancouver for \$1.74 per cwt. (C.F.A. 1-H, Supp. 78).

"It is true that the minimum carload weight to Vancouver is 50,000 lbs., while the minimum to Edmonton is only 36,000 lbs. However, we would be quite willing to have our minimum increased to the same weight as Vancouver's in return for the same consideration as they receive on rates."

"Mr. R. W. Roscow, Secretary-Treasurer of the Great West Garment Co. Ltd., Edmonton, stated, in part: (page 2075 of the Transcript)

* Added by us.

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"Approximately eighty per cent (by weight) of our raw materials are cotton piece goods. The major portion of these we obtain from Eastern Canada. The rate on this material from Montreal to Edmonton is \$2.82. The rate on this same merchandise to Vancouver is \$2.44. That is, the railways will haul these cotton piece goods approximately 750 miles further for 38 cents less.

"It is true that the minimum carload rating to Vancouver is 30,000 lbs. compared with a 24,000 lbs. minimum to Edmonton. This difference is of little consequence. We would be quite willing to accept a 30,000 lb. minimum if our rates were in line with those to Vancouver."

Mr. C. V. Cairns, Manager of Blowey-Henry Limited, Edmonton, wholesalers of furniture and house furnishings, had the following to say: (Page 2078 of the Transcript)

"We feel we are at a decided disadvantage to Vancouver in bringing in many of these products. Permit me to give you an example of what I mean. The C.L. rate on linoleum from Montreal to Edmonton is \$2.40. The same product, travelling from Montreal to Vancouver, enjoys a commodity rate of \$2.24. This is sixteen cents less than the rate to Edmonton for a haul which is approximately 750 miles longer."

Mr. A. A. Holt of the wholesale dry goods firm of Dower Bros. Limited, said in Edmonton: (pages 2088 and 2089 of the Transcript)

"The Vancouver distributor is allowed to mix pillow-cases, sheets, towels and cotton blankets in a carload of cotton piece goods. These goods move to Vancouver from Eastern Canada at a rate of \$2.44 per cwt. We, in Edmonton, are not allowed the same mixing privilege and if we wish to bring in pillow-cases, sheets, towels and cotton blankets we must pay a rate of \$5.48 per cwt.

"To get those things in costs us exactly \$3.04 more per 100 lbs. than it does the Vancouver wholesaler.

"Today, Vancouver distributors can reship these items on an L.C.L. rate into Edmonton at \$3.01 per cwt. In other words, the Vancouver distributors can get these items to Edmonton at a lower freight cost than we can.

"When the Mountain Differential is removed this situation is going to be further aggravated. What it will mean to us is simply that Vancouver distributors are going to be able to distribute certain manufactured cotton goods via Edmonton throughout the whole Peace River country cheaper than we can. The full portent of this has been brought home to us by the fact that a Vancouver dry goods concern,

previously operating with only an office in Edmonton has started construction of a warehouse in this city from which to distribute merchandise throughout Northern Alberta. It is quite obvious that they expect an increased volume of sales due to the lower prices at which they will be able to offer their merchandise when the differential is removed."

Mr. H. B. Armstrong, Vice-President of Western Supplies Limited, an Edmonton firm engaged in the distribution of pipe, had this to say: (page 2094 of the Transcript):

"Permit me to give you an example of just one inequality which affects our business and which we think should be adjusted:-

"Pipe, 4 inches and under in diameter, imported from Welland, Ontario, to Edmonton: On a carload of 35 tons our freight cost is \$1,680. This same carload of pipe will travel from Welland to Vancouver for only \$924. In other words, we are called upon to pay \$756 more freight on every car of pipe than Vancouver pays. We submit that this is an absurd situation.

"The Railways haul the car a much greater distance and get just over one-half of the revenue."

Mr. D. L. Dworkin appeared on behalf of D. G. Latta Ltd., Edmonton, wholesalers of steel products, and said in part: (pages 2105 and 2106 of the Transcript)

"We import steel into northern Alberta from Hamilton, Ontario. Our charge per hundred pounds is \$2.17. This same steel travels from Hamilton to Vancouver on a commodity rate of \$1.74 per hundred pounds. This means that the railways haul this merchandise approximately 25 per cent farther for just 80 per cent of the revenue."

Mr. H.W.J. Madison, Manager of MacDonalds Consolidated Limited, Edmonton, wholesale grocers engaged in business throughout Alberta, stated: (pages 2108 and 2109 of the Transcript)

"We wish to draw the attention of the Commission to the situation that presently applies in connection with the movement of certain grocery items which move from eastern Canada to western Canada. In general, lower rates have been applied to those shipments destined to Vancouver than apply to similar movements to Edmonton. Taking canned goods as an example, we find that the Vancouver distributors are permitted to import mixed carloads of these at a rate of \$1.37. On the

other hand, the Alberta distributor is required to pay \$2.40 for the same merchandise.

"While we realize there is a difference in the carload minimum weight to these points we would gladly accept Vancouver's higher minimum for the same treatment Vancouver receives on rates."

It is apparent from the statements of these Alberta businessmen that long-and-short-haul discrimination has a measurable and deleterious effect upon their ability to service markets adjacent to their business location. It is significant that after an extended period during which there has been no water competition Alberta business should still be laboring under this discrimination which in our submission is absolutely unwarranted.

F. Canadian Railroads and the Long-and Short-Haul Rule.

The attitude of the railroads in the matter of long-and-short-haul discrimination is clearly stated in the Outline Submission of the Canadian Pacific to this Commission. Part I, paragraphs 46 to 50 inclusive (at pages 15 and 16) says:

"46. Competitive rates are made for the sole purpose of obtaining traffic that otherwise would be lost to the railways. The level of a competitive rate is not set by the railway but by the competition. A railway has, and necessarily must have, the privilege and responsibility of deciding whether to establish a competitive rate or forego the revenue which could be derived from handling the traffic.

"47. As competitive rates are made with particular regard to the traffic on which they are to apply, they cannot be applied as maxima to intermediate points where similar competition does not exist.

"48. When a railway, by reducing a rate to meet competition secures or retains some remunerative traffic that it would not otherwise handle, there is benefit both to the shipping public and to the railway.

"49. In such circumstances a community, in which the railway does not have to compete with other transportation agencies, does not suffer when the railway establishes competitive rates in another area. The lower level of transportation charges in the competitive area would be effective there even if the railway had not found it necessary to reduce its rates in order to secure or retain traffic.

"50. An application of these principles is found in "trans-continental rates" in effect between Eastern Canada and the Pacific Coast. These rates were established to enable the railways to secure traffic that would otherwise move by water carriers. These rates do not and should not apply to intermediate points, although in all cases the rate to the intermediate point should not and does not in any case exceed the sum of the competitive rate to the point beyond plus the rate on the return haul to the intermediate point. Competition forces exceptions to the long and short haul principle of rate-making and this is duly recognized in Section 314 (5) of the Railway Act."

With regard to competition. As we have previously pointed out, the transcontinental rate structure is not based solely on water competition via the Panama Canal or by any other route. There is a substantial element of market competition via the Panama Canal or by any other route. There is a substantial element of market competition involved⁽¹⁾ In our Submission rates which are established to meet market competition are in an entirely different class from rates to meet carrier competition. The logic of market competitive rates carried to its conclusion results in the neutralization of natural advantage, the uneconomic location of industry, the wasteful transportation of products, and other socially and economically undesirable consequences. Many transcontinental rates are established to meet market competition, and we object most emphatically to any approach which attempts to place the whole transcontinental rate picture into the framework of carrier competition.

With regard to the actual manner in which these competitive rates involve, and specifically with regard to the statement that "the level

(1)★ See Schedule 2, Appendix B for a list of rate reductions from 1942 to 1946.

of a competitive rate is not set by the railway but by the competition". (Paragraph 46 quoted supra) It is our submission that conclusive proof of this statement has never been presented. On the other hand our study of the transcontinental rate structure indicates that as often as not it is boats that meet the railway rates; and indeed if the railways were willing to compete at a much higher level of charges with the boats they would be just as successful in getting traffic as they have been. With the extremely low level of rates in effect during the thirties the railways still lost substantial traffic. Table 3 is instructive in this regard.

TABLE 3

Percentage of Water-borne Shipments to Rail Shipments,
from Eastern Canada to Pacific Coast Ports 1930-1947.*

<u>Year</u>	<u>Water</u>	<u>Rail</u>	<u>Percentage</u>
	Tons	Tons	
1930	33,772	103,825	32.53
1931	28,354	82,172	34.51
1932	19,836	37,810	52.46
1933	27,447	52,498	51.97
1934	61,392	106,332	57.74
1935	50,852	58,058	87.59
1936	64,941	88,303	73.54
1937	62,380	107,122	58.23
1938	59,399	98,597	60.24
1939	35,210	124,576	28.26
1940	5,525	182,227	3.03
1941	-	290,260	0
1942	3,711	-	0
1943	-	341,473	0
1944	1,659	417,774	0.40
1945	-	473,010	0
1946	-	429,077	0
1947	-	528,488	0

* Figures for the water movement are from Appendix A Schedule 3.

Figures for the rail movement are compiled from D.B.S. publication,
Summary of Monthly Traffic Reports.

The Canadian Pacific Outline Submission makes the further observation that:

"When a railway, by reducing a rate to meet competition, secures or retains some remunerative traffic that it would not otherwise handle, there is benefit both to the shipping public and to the railway. (Paragraph 48 supra)

This is not by any means a certainty.

The character of the traffic and of the lines of road over which it moves must be considered. It is quite possible to encounter a situation in which the competitive traffic is such a large percentage of the total traffic, and the competition is of such a sustained nature, that what would ordinarily appear to be a remunerative rate is not in fact sufficient to cover the total expense of carrying the traffic. Granted however that the rate covers all expenses attributable to the movement the matter of collateral losses on this traffic must also be considered. If competition impinges upon even as much as seventy-five percent of the traffic the making of a competitive rate which is in itself remunerative may have the overall effect of reducing the carrier's net earnings. In this situation it cannot be maintained that the railways and the shippers benefit. Incidental to this matter is the percentage of the competitive traffic which can be retained by the competitive rate. Obviously the less the percentage of such traffic retained the less the likelihood of the rate being beneficial to the parties concerned.

On these grounds it cannot be assumed that a reduced rate to meet competition automatically benefits the railroads and the shipping public.

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G. Summary of the Canadian Experience with the Long-and-Short-Haul Rule.

From the foregoing analysis it is apparent that long-and-short-haul discrimination has been a continuing characteristic of the transcontinental competitive commodity freight rate structure.

The reason for this obnoxious form of local discrimination has not been the same throughout its history. At first justification was sought mainly in American railroad competition, later in water competition, and finally in potential water competition. During the war period the Wartime Prices and Trade Board regulations prohibited rate increases of any kind. Overlaying, and frequently superceding these specific reasons market competition has been a continuing and subtle factor.

The effect of this discrimination has fallen with greatest force upon Alberta where the absolute and relative effects have been significant. It is submitted that the disadvantages arising from long-and-short-haul discrimination far outweigh any real advantages that might be claimed.

The Board of Transport Commissioners have exhibited in this matter a negative attitude. Nowhere can we find evidence to indicate that the Board or its officers have made an adequate attempt to analyze the competitive factors involved or to sufficiently weigh the relative advantages and disadvantages to the railways and to the intermediate points of the lower terminal rates.

It is our submission that the foregoing analysis indicates the necessity for a new approach to long-and-short-haul discrimination and specifically as it is found in the transcontinental rate situation. In as much the same problem has been of concern to shippers, railroads and governments in the United States it is now our intention to present a statement of the American experience.



PART III - THE AMERICAN EXPERIENCE

In this section we are describing the process by which long-and-short-haul discrimination was largely eliminated from the transcontinental railroad route structure in the United States.

In 1888, the Interstate Commerce Commission, referring rate to transcontinental rates said: "Ever since the opening of the first transcontinental line it has been customary to make higher rates at intermediate points than at the terminals, the through business having been treated as competitive" Martin v. Southern Pacific Co., 2 I.C.C. 1, 12 (1888). The extent to which rates at intermediate points, particularly in the Rocky Mountain States, have exceeded through rates to and from the Pacific Coast terminals has varied from time to time but it may be taken as established that higher rates at intermediate points in the Mountain States, than applied at the Pacific Coast terminals, were a well-recognized characteristic of the rate structure, although a characteristic that was frequently criticized, and after 1887, was many times attacked in proceedings before the Interstate Commerce Commission.

In tracing the process by which this feature of the rate structure was modified, and eventually eliminated in large measure, it is necessary to recognize five distinct periods as follows:

- A. The period from 1887 to 1897 (pp. 70 - 76 infra.)
- B. The period from 1897 to 1910 (pp. 76 - 81 infra.)
- C. The period from 1910 to 1918 (pp. 81 - 90 infra.)
- D. The period from 1918 to 1932 (pp. 91 - 100 infra.)
- E. The period from 1932 to the present time
(pp. 100 - 104 infra.)

The significant developments in each of these periods are considered below.

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A. The Period from 1887 to 1897

The period from 1887 to 1897 was dominated by the interpretation placed upon the long-and-short-haul clause (section 4 of the Act to Regulate Commerce) as it was originally enacted. That clause, as enacted in 1887, provided

"That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance....."

The Commission was empowered "after investigation" to make exceptions "in special cases" and "to prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act."

For the purpose of this analysis the important question is what circumstances created such a dissimilarity of conditions and circumstances at through and intermediate points as to make it not unlawful to charge more for the shorter than for the longer haul without the prior approval of the Commission. This question came before the Commission in 1887 in the proceeding known as In Re Louisville and Nashville Railroad Co., 1 I.C.C. 31, and later in Railroad Commission of Georgia v. Clyde Steamship Co., 5 I.C.C. 327 (1892). The position taken by the Commission in the first of these cases was reaffirmed and stated concisely in the second. In the words of the Commission,

"The competition of carriers subject to the Act with carriers not amenable to its provisions plainly constitutes dissimilar circumstances and conditions which justify a reasonable departure from the rule of the fourth section if the competition be actual and controlling in respect to traffic important in amount."

"This includes", the Commission went on to say, "the competition of independent water lines, independent state railroads and foreign railroads, where they have not so connected themselves with the carriage of interstate traffic as to thereby become subject to the Act." (5 I.C.C. 327,

391). The reference to "state railroads" is to railroads operating a line lying wholly within a particular State of the United States. The foreign railroads referred to were obviously Canadian roads. (1 I.C.C. 31, 80-81).

Cases involving long-and-short-haul discrimination in the transcontinental rate structure which came before the Commission in the period from 1887 to 1897 were considered in the setting which we have described; namely, that if through rates were controlled by competition of carriers not subject to the Commission's jurisdiction, and such competition did not operate at intermediate points, the through and local traffic was not being handled under substantially similar circumstances and conditions, and hence there was no violation of the long-and-short-haul clause. After the decision of the Commission in the Clyde Steamship Co. Case, above mentioned, no circumstances alleged to justify departure from the long-and-short-haul principle, other than those mentioned in that case, would be recognized by the Commission as justifying departure from section 4 without specific authorization of the Commission.

Since justification of most seeming departures from the long-and-short-haul clause in the transcontinental rate structure was alleged competition by water for the through business, the Commission was called upon in several cases to determine whether such competition really existed, and whether or not it was a controlling force depressing the through rates below a normal basis. We will now consider briefly the cases involving this question which came before the Commission in the period from 1887 to 1897.

Martin v. Southern Pacific Co., 2 I.C.C. 1 (1888). In this case higher rates on certain commodities from San Francisco to Denver than applied from San Francisco to Kansas City, 600 miles farther east, were found in violation of the Act. The Commission found that no competition existed to depress the through rate, hence section 4 of the Act

was violated. After this decision the carriers realized that a comprehensive revision of the whole transcontinental rate structure would be necessary. A revision of the rates was undertaken and tariffs were filed containing rates purported to be in compliance with the long-and-short-haul clause. These tariffs were before the Commission in the case next described.

In Re Tariffs of the Transcontinental Lines. 2 I.C.C. 324
(1888). In this proceeding the Commission found that the new tariffs filed by the carriers eliminated many fourth-section violations. These tariffs were not formally before the Commission, but the Commission's views had been sought in their preparation. "It will not do, however, for the carriers to claim that they have brought their lines wholly into conformity with the rule of Section IV of the Act to regulate commerce, upon westbound business", said the Commission. (p. 336). The Commission pointed out that the tariffs contained many rates which were lower between the Atlantic ports and the Pacific Coast than those applicable at intermediate points. These violations were partially obscured by the fact that through rates were not published in the same tariffs as the intermediate-point rates.

Rice v. Atchison, Topeka and Santa Fe Railroad Co., 4 I.C.C. 228 (1890). In this case complaint was made that the rates charged on petroleum and its products from various eastern points to Pacific Coast terminals were lower than to intermediate points. The case was tried on the basis of section 4 only. Rates were 90 cents per hundred pounds from points east of the 97th meridian of longitude to San Francisco and other Pacific Coast terminals. To intermediate points west of the Missouri River the rates increased with distance until they equalled the 90-cent rate to the Coast plus the local rate back from the Coast. Justification of the lower through rates was sought on the basis of water competition, principally by clipper ships around Cape Horn. The carriers showed that actual competition existed. No violation of section 4 was found.

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San Bernardino Board of Trade v. Atchison, Topeka and Santa Fe Railroad Co., 4 I.C.C. 104 (1890). The complaint in this case alleged that rates on numerous commodities from Missouri River points, St. Louis, Chicago, Cincinnati, Detroit, and New York were lower to Los Angeles than to San Bernardino, California, and intermediate point. The carriers alleged dissimilarity of conditions and circumstances by reason of water competition from New York and other eastern points to Los Angeles. On the commodities in question the Commission found little competition from New York via Cape Horn, or via the Isthmus of Panama, nor any such competition from interior points. The Commission laid down this principle:

"Possible competition by water is not sufficient to justify a greater charge for the shorter distance. Under the provisions of the fourth section of the Act to regulate commerce, the competition must be actual, and so counteracting as to take the freight if the lower charge for the longer distance was not maintained." (p.114).

The Commission concluded its consideration of this case by saying:

"The defendants have failed to establish the existence of dissimilar circumstances which justify the greater charge for the shorter distance to San Bernardino, than for the longer distance to Los Angeles, from Kansas City, St. Louis, Chicago, Detroit, Cincinnati, New York, and corresponding points, on commodities mentioned in the complaint. Such greater charge is therefore unlawful and an order will issue requiring its discontinuance from and after September 1, 1890." (p. 115).

The resulting order of the Commission, however, was not complied with. The courts refused to enforce it, holding that there was competition at the through point which made the prohibitions of the fourth section of the Act inapplicable. Interstate Commerce Commission v. Atchison, Topeka, and Santa Fe Railroad Co., 50 Fed Rep. 295 (1892).

Merchants' Union of Spokane Falls v. Northern Pacific Railroad, 5 I.C.C. 478 (1892). In 1889 the Merchants' Union of Spokane Falls, now Spokane, in the State of Washington, filed a complaint with the Interstate Commerce Commission alleging, among other things, that the

rates charged on all classes of freight to Spokane Falls from the East were unreasonable, and that the higher rates charged on many articles to Spokane Falls than to Portland, Tacoma, and Seattle violated the long-and-short-haul clause of the Act to Regulate Commerce. Spokane Falls was about 550 miles east of Portland, and more than 400 miles east of Tacoma and Seattle, and was intermediate between those cities and the eastern termini of the Northern Pacific Railroad at St. Paul, Minneapolis, and Duluth.

The proceedings revealed that the class rates from the Eastern termini of the Northern Pacific and from points east thereof were the same to Spokane as to the Pacific Coast points. These rates therefore, did not violate the long-and-short-haul clause. In addition to these class rates there were a large number of special commodity rates both eastbound and westbound. The number of commodity rates applying westbound, however, greatly exceeded the number of those applying eastbound. Some of the westbound commodity rates, like the class rates, were the same to the Pacific Coast terminals and to intermediate points. A much larger number of the commodity rates, however, applied only to the Pacific Coast terminals, while the higher class rates applied to intermediate points like Spokane, unless the low commodity rate to the Pacific Coast terminals plus the local rate from the terminals back to the intermediate points resulted in a lower combination, in which case the lower combination applied.

The Commission held that the maintenance of the lower rates to the Pacific Coast terminals than to Spokane Falls was not in contravention of the long-and-short-haul clause. The Commission found that the traffic to the Coast and to the intermediate points was not handled under substantially similar circumstances and conditions, since the through traffic was competitive with water routes and the traffic to the intermediate points was not. There was disagreement between the parties as to the extent of the competition by water at the terminals. The Commission, after examining the evidence relating to this matter said: "... we are constrained to hold that water competition of controlling force and affecting a variety of traffic important in character and

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amount, actually exists at these several terminals. . . ." Although it found "constant and controlling competition" at the terminal points it said: ". . . .we have the impression at the same time that some of the commodity rates under which traffic is taken to western terminals are lower than is necessary to prevent water lines from getting the business, and that commodity rates are accorded to more or less articles which are not adapted to water transportation and therefore not subject to water competition." (p. 503). The Commission pointed out that "nothing but the stress of unavoidable competition can legalize the inequality resulting from higher rates for shorter than for longer hauls." (p.503). Since the evidence did not permit a minute analysis of the situation with respect to each commodity the Commission said: "If specific cases of discrimination against interior shippers are alleged to result from these commodity rates, either because some article receives a rate clearly below the necessities of competition, or because the commodity rate is applied to an article not actually competitive, the Commission will be at liberty within the spirit of this decision to investigate any complaint of that nature and make such correcting order as the facts may require." (pp. 504-505).

So far as class rates were concerned the Commission found that since the terminal rates were unaffected by competition and were conceded to represent fair compensation for the service performed, it must therefore be unreasonable to maintain the same rates for the much shorter distance to Spokane. In other words, the class rates were unreasonable because they were not graded in accordance with distance. The Commission held that "the Spokane rate should be approximately eighteen percent below the rates now in force at that point." (p. 510). The order of the Commission was set aside by a federal court on the grounds that much of the order was too vague for enforcement, and that where it was not vague, it prescribed rates for the future which the Commission at that time had no power to do. Farmers' Loan & Trust Co. v. Northern Pacific Ry. Co., 83 Fed. 249 (1897).

Summary. The above cases, decided between 1887 and 1897, warrant the following general conclusions:

1. The long-and-short-haul clause, as enacted in 1887, brought about some readjustments in transcontinental rates which eliminated some instances of higher charges at intermediate points than applied for the longer through distances.

2. Notwithstanding these modifications of the transcontinental rate structure higher rates for shorter than for longer distances continued to characterize the rate structure.

3. The instances in which the Commission considered that higher charges at intermediate points were justified were instances in which real and controlling competition by water carriers was found to exist for the through traffic and not for the traffic at intermediate points.

4. The instances in which the Commission found the rates to be in violation of section 4 were instances in which the water competition alleged to justify the lower through rates was not considered by it to be a controlling force.

B. The Period from 1897 to 1910

During this period efforts to bring about the removal of seeming long and short haul discrimination in the transcontinental rate structure were blocked by the interpretation placed by the courts upon section 4 of the Act to Regulate Commerce. Three important Supreme Court decisions relating to this matter were Interstate Commerce Commission v. Alabama Midland Railway Co., 168 U.S. 144 (1897); Louisville & Nashville Railroad Co. v. Behlmar, 175 U.S. 648 (1900); East Tennessee Virginia & Georgia Railway Co. v. Interstate Commerce Commission, 181 U.S. 1 (1901). Two points were established by these decisions, as follows: (1) competition of whatever type (not merely competition with carriers not subject to the Act) which existed at the through point and not at the intermediate points created such a dissimilarity of circumstances and conditions that the prohibition of higher charges for shorter than for longer hauls did not apply; (2) the carriers could in

the first instance determine for themselves whether conditions and circumstances were dissimilar or not at the through and intermediate points, and they need not therefore wait for the Commission to grant them relief from the operation of section 4 before charging higher rates at intermediate points then applied at through points where they believed circumstances and conditions to be dissimilar.

It was the view of the Interstate Commerce Commission that this interpretation of section 4 rendered it a nullity. Cases involving long-and-short-haul discrimination in transcontinental rates that came before the Commission between 1897 and 1910 were decided in the setting created by these court decisions and the interpretation placed upon them by the Commission. For statements of the Interstate Commerce Commission setting forth its view that section 4 had been rendered a nullity see City of Spokane v. Northern Pacific Ry. Co., 21 I.C.C. 400, 409 (1911); I.C.C., Annual Report, (1897), p. 42; Administration of the Fourth Section, 87 I.C.C. 565, 564 (1924).

During the period under consideration (1897-1910) there appears to have been but one case involving transcontinental rates in which the Commission found the rates to be in violation of section 4. This was in Kindel v. Atchison, Topeka & Santa Fe Ry. Co., 8 I.C.C. 608 (1900) and 9 I.C.C. 606 (1903), involving higher rates from the Missouri River to Denver than applied from the Missouri River to the Pacific Coast; and higher rates from the Pacific Coast to Denver than applied to the Missouri River. The Commission required these rates to be brought into conformity with the Long and Short Haul clause except that upon sugar, rice, cocoanut oil, hemp, baking powder, blankets, books, boot and shoe heels, chocolate and extracts, the rates from the Pacific Coast to Denver might exceed the rates to the Missouri River.

In two cases involving transcontinental rates the Commission found that water competition existing at the through points prevented a finding of violation of section 4. These cases were Holdskom

v. Michigan Central Railway Co., 9 I.C.C. 42 (1901). and City of Spokane v. Northern Pacific Ry. Co., 15 I.C.C. 376 (1909). The latter of these cases is more fully described in a later paragraph.

In two cases decided during this period issues under section 4 were evaded or avoided in one way or another. In Shippers Union of Phoenix v. Atchison, Topeka & Santa Fe Ry. Co., 9 I.C.C. 250 (1902), the Commission left the fourth-section issue for future consideration on a broader and more inclusive record since the question raised involved the lawfulness of the whole transcontinental rate structure. In Business Men's League v. Atchison, Topeka & Santa Fe Ry. Co., 9 I.C.C. 318 (1902). violation of section 4 was alleged but this aspect of the case was not litigated in the proceeding.

Such relief as intermediate points obtained from discriminating rates during this period came principally from findings that the higher rates at intermediate points were unreasonable per se under section 1 of the Act, ^{*} rather than from a finding that the rates were in violation of section 4. Two minor cases of this sort were Kindel v. Boston & Albany Railroad Co., 11 I.C.C. 495 (1905), and Merchants' Traffic Association v. New York, New Haven & Hartford Railroad Co., 13 I.C.C. 225 (1908).

In the first of these cases, a rate of \$2.24 per hundred pounds on cotton piece goods from Boston, New York, and other eastern points to Denver was found unreasonable to the extent that it exceeded \$1.50, the rate from the same points to San Francisco. In the second case, the Commission reaffirmed the finding made in the Kindel case which had not been observed by the carriers.

In addition to these minor cases there were four other cases of much greater importance in their effect on the transcontinental rate structure which were decided during this period, and in which such relief

* Section 1 provides that charges shall be "just and reasonable", and that all "unjust and unreasonable" charges are unlawful.

as was obtained from high intermediate-point rates was obtained as a result of finding the rates unreasonably high under section 1 rather than in violation of section 4. Each of these decisions is described briefly below.

City of Spokane v. Northern Pacific Ry. Co., 15 I.C.C. 376 (1909). In this case higher class rates from St. Paul and Chicago to Spokane than to Seattle were found unreasonable, and the Commission required that the rates to Spokane be lower than the rates to Seattle. The Commission found that the Spokane rates should be about 16-2/3 per cent below the rates to Seattle. (p. 421). Commodity rates on 34 commodities from St. Paul and Chicago to Spokane were also found unreasonable.

In a supplemental report, 19 I.C.C. 162 (1910), commodity rates on 580 commodities from "eastern defined territory" to Spokane were prescribed. In referring to the first decision in the Spokane Case, the Commission pointed out that the class rates prescribed had been put into effect. The Commission also said: "While we dealt only with rates to Spokane, it was understood that these reductions to that locality would of necessity involve a widespread readjustment of rates to all inter-mountain territory from the Canadian line to Mexico." (p. 164). The "eastern defined territory", from which rates were involved consisted of six sub-territories known as Missouri River territory, Mississippi River territory, Chicago territory, Detroit territory, Pittsburg territory, and New York territory. Although the relation of the prescribed rates to the Pacific Coast terminal rates is not shown in the Commission's report it is clear that the Spokane rates were not reduced to the terminal rates. The Commission rejected the contention of the complainants that no rate should be permitted to Spokane which exceeded the rate at Seattle. This position of the Commission was in recognition of the depressed character of the terminal rates.

Commercial Club, Salt Lake City v. Atchison, Topeka & Santa Fe Ry. Co., 19 I.C.C. 218 (1910). This case was decided the same day as

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the supplemental decision in the Spokane case. The Commission prescribed lower class rates between Chicago, Mississippi River points, and Missouri River points, on the one hand, and Salt Lake City and related points. A large number of commodity rates from the same eastern points were also prescribed. A few eastbound rates from Utah points were also prescribed on lower levels than those which had been in effect.

Railroad Commission of Nevada v. Southern Pacific Co., 19 I.C.C. 238 (1910). In this case both class and commodity rates from eastern defined territory to Reno and other Nevada points were in issue. The rates to Reno had previously been the rates to Sacramento, California, plus the local rates from Sacramento to Reno. "The time has come, in our opinion," said the Commission, "when the carriers west of the Rocky Mountains must treat the inter-mountain country upon a different basis from that which has hitherto obtained." (p. 254). Nevada asked that she be given rates as low as those given Sacramento. The Commission said: "The full extent of this petition can not be granted," (p. 254). It did, however, make substantial reductions in the class rates to Nevada, and the carriers later established graded class rates conforming to the fourth section. 21 I.C.C. 329, 331 (1911). Reasonable class rates were prescribed, but the commodity rates were reserved for later treatment. At that time there were few commodity rates from eastern defined territory to Nevada points, although there were many hundred commodity rates to the Pacific Coast terminals. The Commission believed that a line of commodity rates should be established to Nevada points, and observed that the Nevada points should be put on a practical parity with points in eastern Washington and eastern Oregon. The Commission was obviously referring to the commodity rates prescribed to the latter points in the supplemental report in the Spokane case 19 I.C.C. 162.

Maricopa County Commercial Club v. Santa Fe. Prescott & Phoenix Ry. Co., 19 I.C.C. 257 (1910). This was a companion case to the Reno or Nevada case. The Commission prescribed reasonable class

rates from eastern defined territory to Phoenix, Arizona, but reserved commodity rates for future treatment. Again, as in the Reno case, the Commission expressed the opinion that the carriers should extend to intermediate points, Phoenix and other points in Arizona, a reasonable list of commodity rates "in substantial conformity with the rates made on the same commodities to other inter-mountain points on the lines to the north." (p. 258).

Summary. It will be seen from the cases described or referred to which occurred in the period from 1897 to 1910, that, with one exception, such reductions in the discrepancies between rates at inter-mountain-territory points and those applying on the longer hauls to the Pacific Coast came largely as a result of findings that the rates at intermediate points were unreasonable in themselves under section 1 of the Act to Regulate Commerce and not as a result of application of the long-and-short-haul clause which had become almost entirely ineffective as a result of judicial interpretation. It will also be observed that discrimination against inter-mountain territory, although somewhat reduced in amount, was not eliminated.

C. The Period from 1910 to 1918

By the Mann-Elkins Act of 1910 Congress amended the long-and-short-haul clause by striking out the qualifying phrase "under substantially similar circumstances and conditions" which, as previously shown, made the prohibition of higher charges for shorter than for longer hauls inapplicable if competition of any type applied at the through points and not at the intermediate points (pp. 77-78 supra.) Under the amended section 4 higher charges for shorter than for longer hauls over the same line, in the same direction, the shorter being included within the longer distance, were prohibited unless the Commission in a proper proceeding had granted relief from the prohibitions of the section. No longer was it possible for the carriers to allege

a dissimilarity of conditions and circumstances at the through and intermediate points such as to make the prohibition of the section inapplicable. As Commissioner Lane said: "Congress has taken from the law an embarrassing modification of the prohibition against the higher charge to the intermediate point." 21 I.C.C. 329, 342 (1911). In another place Commissioner Lane said:

"Congress intended that the law should say that, as a general rule, there should be no lesser charges to the more distant point, but it was not willing to say that there should not be some exceptions to this rule. The railroads, however, were not to make these exceptions, themselves. Such exceptions were to be made only upon petition to the Commission upon public justification being shown." (p. 335).

Commissioner Lane went on to say that "The test which the Commission must now apply to determine whether the carrier may be given the advantage of an exception to the general rule of section four is the same test that it may apply with respect to any other discrimination or inequality." (p. 338).

It will be seen from the preceding comments that the Commission, after the 1910 amendments to the Act, was in a position to take more effective action in eliminating long-and-short-haul discrimination from the rate structure. We may now turn to a consideration of the application of the revised section 4 to the transcontinental rate structure.

Railroad Commission of Nevada v. Southern Pacific Co. and Maricopa County Commercial Club v. Santa Fe. Prescott & Phoenix Ry. Co., 21 I.C.C. 329 (1911). These were the same proceedings which had resulted in the prescription of class rates to stations in Nevada and Arizona in 1910. (Docket No. 1665 & No. 1796) The original decisions were made before section 4 had been amended, and are discussed in the preceding section of this statement. (pp. 79-80 supra.) In the original decisions, as was pointed out above, consideration of commodity rates was deferred until a later time. The Commission was now, in 1911, ready to dispose of the complaints against the commodity rates.

The history of competition between railroads and sea routes is discussed at some length in the Commission's report, and the Commission concludes that "In the light of this history it is not to be gainsaid that the transcontinental lines must give consideration to sea competition." (p. 352). Competition for traffic at the Atlantic ports was recognized as particularly compelling. Such competition extended to points inland from the Atlantic seaboard because of the possibility of shipping commodities to the Atlantic seaboard for trans-shipment by water to the Pacific Coast. The same rates, however, which had been given to New York and other Atlantic ports on transcontinental traffic had been extended to origins as far west as Denver, Colorado.

In its decision the Commission recognized that water competition justified lower rates from Atlantic seaboard cities to the Pacific Coast terminals than applied to intermediate points in the so-called inter-mountain territory, but that the influence of water competition became progressively less important from origins farther west. The Commission accordingly established a zoning of eastern origins, permitting greater discrimination against inter-mountain territory on traffic originating on or near the Atlantic seaboard, but a lesser amount of discrimination on traffic originating at points farther west. (1) On traffic originating on and west of the Missouri River the rates to intermediate points were not to exceed the rates contemporaneously in effect to coast terminals. (2) Traffic originating at Chicago and between Chicago and the Missouri River might move to intermediate points under commodity rates which were 7 per cent higher than were applied on traffic from the same origins to the Pacific Coast. (3) From points east of Chicago to and including Pittsburgh the rates to intermediate points might exceed the rates to the Pacific Coast by 15 per cent. (4) From New York and Trunk-Line Territory, where water competition was most compelling, the discrimination against intermediate points might be as great as 25 per cent.

City of Spokane v. Northern Pacific Ry. Co., and Commercial Club, Traffic Bureau of Salt Lake City v. Atchison, Topeka & Santa Fe Ry.

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Co., 23 I.C.C. 400 (1911). These cases represent a re-examination of the earlier decisions in the same cases, decided before the 1910 amendment to section 4. Here the Commission adopted the same device that had been used in the Nevada and Arizona cases just described, and established a zoning of eastern origins. As in the other cases, rates from the Atlantic seaboard to such intermediate points as Spokane might not exceed the rates to the Pacific Coast by more than 25 per cent. From the area north of the Ohio River and west of the Buffalo-Pittsburgh line to Chicago the rates to inter-mountain territory might exceed those to the Coast by 15 per cent. From Chicago and points west thereof in a zone extending from Lake Superior south to the Gulf of Mexico the rates to intermediate points might not exceed the Coast rates by more than 5 per cent. From points in Zone 1, which included St. Paul and Omaha, the rates to intermediate points in inter-mountain territory might not exceed the rates to the Pacific Coast terminals.

It will be seen from this group of related cases, decided in 1911, that the Commission was taking active steps to reduce long-and-short-haul discrimination on transcontinental rates to such as could be justified by the existence of water competition. Even here, however, the Commission was conservative in its revision of the rate structure, for it allowed some discrimination against inter-mountain territory on traffic originating as far west as Chicago. In so doing the Commission said:

"It is fairly established that the influence of water competition does not cease at the Pittsburg-Buffalo line, but extends westward as to certain particular commodities, and doubtless for some distance west of Pittsburg the carriers may properly make rates which will prevent the movement eastward to the seaboard instead of westward over their lines, but we look in vain throughout the records of this Commission for 20 years to find any but the most fragmentary evidence that sea competition extends to Chicago." (p. 355, emphasis ours).

In authorizing rates from Chicago to intermediate points 7 per cent higher than to the Pacific Coast, the Commission said:

"We desire to be extremely conservative in this the first application of the new law. . . . " (p. 369).

Commodity Rates to Pacific Coast Terminals, 32 I.C.C. 611 (1915). The decision of the Commission in the preceding cases was appealed to the courts. It was not until June 13, 1914, that this litigation was terminated by a decision of the Supreme Court of the United States, upholding the orders of the Commission. Meanwhile the Panama Canal had been opened, and now the carriers sought a postponement of the Commission's orders requiring a revision of the transcontinental rates; particularly with respect to a list of commodities designated as Schedule C commodities on which water competition was particularly strong and on which the railroads in this case were seeking further fourth-section relief.

The evidence showed that most of the Schedule C commodities originated in large volume on the eastern seaboard, and that they were particularly susceptible to water competition. The Commission noted that since the opening of the Panama Canal the water carriers had materially reduced their rates, shortened the time of transit, increased their sailings, increased their tonnage capacity and also the tonnage of freight actually moved. The Commission pointed out that "we are witnessing the beginning of a new era in transportation between the Atlantic and the Pacific coasts," (p. 621), and that "To secure any considerable percentage of this coast-to-coast traffic rates on many commodities must be established by the rail lines materially lower than those now (1915) existing." (p. 621). The Commission also permitted the blanketing of these rates on traffic originating as far west as the Missouri River. On traffic to intermediate points, however, blanketing was not authorized, but a system of graded rates was applied, these rates being higher from eastern origin groups than upon traffic from interior origins farther west. The result of this decision of the Commission was to exempt Schedule C commodities from the zoning orders of 1911 and to permit, on these commodities, greater departure from section 4 than the 1911 orders authorized.

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After this decision of the Commission three groups of commodities existed on which commodity rates were published from eastern origins to the Pacific Coast and to intermediate points, and the extent of fourth-section relief granted to permit lower rates to the Pacific Coast than to intermediate points, differed on each group. As described later by the Commission, Schedule A commodities consisted of commodities "which either are not adapted to water transportation or which originate in territory so far removed from the Atlantic seaboard as to make their transportation by water unlikely." 46 I.C.C. 236, 249. This list included about 100 items, among which were threshing machines, agricultural implements, vehicles, many furniture items and fragile articles, wheat and flour. On these items rates to the Pacific Coast were not lower than to intermediate points. Schedule B commodities included about 350 items which were somewhat adapted to water transportation. This list was subject to the zoning limitations of 1911, that is, the rates to intermediate points might be higher than to the Pacific Coast by 7 per cent from points in Zone 2, 15 per cent from points in Zone 3 and 25 per cent from points in Zone 4, but from points in Zone 1 strict conformity with the long-and-short-haul clause was required. This list included certain kinds of agricultural implements, baking powder, bottles, brass and bronze goods, certain mixtures of canned goods. carpets and rugs, clothing, dried fruits and vegetables and numerous other articles. Schedule C commodities, as already indicated, were articles which originated in large volume on or near the Atlantic seaboard and were particularly adapted to water transportation. The list included about 90 items, when shipped in carloads, including certain kinds of canned goods, many iron articles, nails, bolts, nuts, washers, bar iron, sheet iron, structural iron and steel, many paper articles, paints, soap, wire, rope, and telephone wire. On these articles a greater amount of discrimination against inter-mountain territory was permitted than authorized by the zoning orders of 1911.

In the second supplemental report in this case, 34 I.C.C. 13,

the Commission modified the practice of making rates to points in so-called "back-haul" territory, a narrow strip of territory from 200 to 300 miles in width immediately east of the Pacific Coast terminals. The rates had commonly been the rates to the Pacific Coast terminals plus the local rates back. The Commission required that the rates to points in this area should not exceed the rates to the terminals plus 75 per cent of the local rates from the terminals, and in no case, of course, should they exceed the maxima permitted at intermediate points in inter-mountain territory.

Rates on Iron and Steel Articles, 38 I.C.C. 237 (1916).
In Commodity Rates to Pacific Coast Terminals, 32 I.C.C. 611 (1915), described above, the Commission had authorized the carriers to establish a 55-cent rate on certain iron and steel articles from Chicago to Pacific Coast ports without observing the long-and-short-haul clause. The carriers now sought to apply the 55-cent rate from Pittsburgh and Cincinnati and points grouped therewith. The Commission, after studying the extent of competition, authorized a 65-cent rate, instead of the 55-cent rate, because the intensity of the competition of water lines had been lessened by reason of Panama Canal slides, and also by the diversion of ships to trans-Atlantic service, and a rise in steamship rates. The Commission said: "It seems clear that ordinarily the Commission should not, by relief from the fourth-section, authorize the carriers to go any further in meeting water competition that is necessary to meet the competition afforded by water routes." (p. 240).

This case is important, not because of any important revision of transcontinental rates, but because it again demonstrates the care with which the Commission examined fourth-section cases, to be sure that reduced through rates authorized were no lower than necessary to meet the competition actually encountered.

Reopening of Fourth Section Applications, 40 I.C.C. 35 (1916).
 Owing to the closing of the Panama Canal for several months in 1915 and 1916.

and the diversion of steamships from intercoastal service to foreign trade service because of the European war, the inter-mountain territory interests petitioned the Interstate Commerce Commission for a reopening of the various cases in which fourth-section relief had been granted on transcontinental traffic. As a result of this proceeding the Commission found that effective water competition between the two coasts had ceased, and that there was little likelihood that the situation would change in the near future. Since the fourth-section relief granted to the transcontinental rail lines on Schedule C commodities in 1915, and later on certain iron and steel articles, had been based on the intensification of water competition which followed the opening of the Panama Canal, and this competition had now ceased to exist, the Commission rescinded its former grant of additional fourth-section relief on Schedule C commodities and on certain iron and steel articles, and required conformity with the zoning limitations established in the 1911 proceedings. Fourth-section relief on certain eastbound California products, via rail and water through Galveston, was also withdrawn for the same reason.

The result of this decision, therefore, was (1) to withdraw the special relief granted on Schedule C commodities and the iron and steel articles mentioned above and to require a return to the more limited discrimination against inter-mountain territory permitted by the zoning orders of 1911, and (2) to require conformity to the long-and-short-haul clause, with certain possible exceptions, on certain east-bound products.

Transcontinental Rates, 46 I.C.C. 236 (1917). This case was a reopening of all fourth-section applications relating to rates on commodities from eastern defined territories to Pacific Coast ports and intermediate points, and of applications respecting rates on various eastbound products from California to Atlantic ports. The Commission found that "the present service by water between the two coasts of the United States is infrequent, sporadic, and irregular" (p. 343), and that there "is no competitive necessity by reason of water service between .

the two coasts which warrants the rail carriers in maintaining, under present circumstances, lower rates to the Pacific Coast than are normal and reasonable or lower than to intermediate points." (p. 243). All fourth-section relief was withdrawn. The Commission recognized that water competition would undoubtedly become effective again at a later date, and that fourth-section relief might again become appropriate. Anticipating this situation, the Commission said:

"We are of the opinion that the best interests of the public of the transcontinental carriers, and of these inter-mountain cities in particular, will be secured by a policy that permits the transcontinental carriers to share with the water lines in the traffic to and from the Pacific coast ports."

The Commission cautioned, however, that any lower rates to the ports, when they became necessary, "must not be lower than the competition of the boats makes necessary, and must be high enough to cover, and that by a safe margin, actual out-of-pocket costs of securing and handling the traffic." (p. 268). In view of the fact that effective water competition was now absent the Commission required a readjustment of rates in conformity with the long-and-short-haul clause. Commissioner Harlan dissented on the grounds that the absence of effective water competition through the Panama Canal was temporary, and that the transcontinental rates should not be disturbed as a result of such a temporary condition.

This case is of interest in three important respects. (1) The Commission required, for the first time, that all transcontinental rates be brought into conformity with the long-and-short-haul clause; (2) the decision was based on the absence of controlling water competition, a situation admitted to be temporary in character; (3) the report indicated the belief of the Commission that if and when water competition should again become effective, fourth-section relief to enable the railroads to lower their rates to and from the Pacific Coast terminals without reducing them at intermediate points in inter-mountain territory might again be justified.

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Transcontinental Commodity Rates, 48 I.C.C. 79 (1918.)

This proceeding involved the lawfulness of the rates filed by transcontinental railroads in purported compliance with the orders of the Commission in the case just previously described, 46 I.C.C. 236, which required that the transcontinental rates be brought into conformity with the long-and-short-haul clause. The carriers elected to comply with the Commission's order and with section 4 of the Act by raising the terminal rates to the level of the highest intermediate-point rates, and in some instances to slightly more than the intermediate-point rates. The Commission permitted this adjustment, and the rates became effective on March 15, 1918. 74 I.C.C. 48.

Summary. Between 1910 and 1918 transcontinental rates were finally brought into conformity with the long-and-short-haul clause as a result of a series of decisions of the Commission under the revised and strengthened section 4. Certain facts stand out in the treatment of these cases by the Commission. They are as follows:

(1) The Commission recognized that when water competition was active the railroads were justified in charging lower rates between the east and the Pacific Coast than were charged at intermediate points in inter-mountain territory.

(2) The Commission inquired at length into the extent and potency of actual water competition.

(3) In the earlier cases in this period the Commission found that the discrimination against inter-mountain territory had often been greater than could be justified by water competition, and it restricted the amount or degree of discrimination in rough conformity with the effectiveness of water competition.

(4) The final elimination of fourth-section departures in 1918 came as a result of the virtual discontinuance of steamship operations through the Panama Canal which accompanied World War I.

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D. The Period from 1918 to 1932

This period is characterized by one attempt to get lower rates from the east to points in inter-mountain territory than applied to the coast, and several attempts of the railroads to re-introduce fourth-section departures into the transcontinental rate structure. Each of these cases will be considered in turn.

Intermediate Rate Association v. Director General, 61 I.C.C. 226 (1921). In 1918, it will be recalled, transcontinental rates had been brought into conformity with the long-and-short-haul clause. At that time the class rates from eastern points not only complied with the long-and-short-haul clause but were lower to points in inter-mountain territory than to the Pacific Coast. In other words, the class rates from eastern points were graded according to distance, increasing as the distance increased. The first-class rate, for instance, from the Atlantic seaboard to Salt Lake City was 425 cents per hundred pounds. To Spokane it was 437.5 cents, and to the Pacific Coast 462.5 cents. Commodity rates on about 49 Schedule A commodities were also graded. On most commodities, however, the rates to the intermediate points and to Pacific Coast points were the same, and this equality of rates had been established for the most part by raising the rates to the Coast.

The Intermediate Rate Association, in the proceeding now described, was seeking graded rates on the commodities on which the rates were not graded. The Commission refused to require this. It pointed out that the Coast rates, although they had been increased in order to comply with the long-and-short-haul clause, were held down to their existing levels because of the prospective return of water competition in full force. The situation as it appeared to the Commission was that the grading of the rates could not be brought about by raising the coast rates without diverting traffic to water lines and that the coast rates, being held down by water competition, or in

anticipation of it, could not be considered unreasonable for the somewhat shorter distances to inter-mountain territory. This case is important in that the Commission refused to establish a system of graded commodity rates, with lower rates to inter-mountain points than to the Pacific Coast.

Transcontinental Cases of 1922, 74 I.C.C. 48 (1922).

The return of water lines to intercoastal service in 1921 led the rail carriers to file an application with the Commission for fourth-section relief on transcontinental traffic. It will be recalled that the denial of fourth-section relief in Transcontinental Rates, 46 I.C.C. 236, in 1917, was based on the discontinuance of water transportation via the Panama Canal, but that the Commission intimated that if water transportation should again become a reality, it would be appropriate for the railroads to seek fourth-section relief once more. Water transportation through the Panama Canal had now been restored, and the Commission admitted that the competition was keener and the water service more efficient than at any time before the war.

The rail carriers proposed to reduce the rates from eastern points to the Pacific Coast without reducing rates at intermediate points. The railroads did not propose to reduce the rates sufficiently to divert much of any traffic originating at the Atlantic ports. From interior points, however, they proposed rates to the Pacific Coast which would approximate the rail rates from those points to Atlantic ports plus the water rates via the Panama Canal. For instance, the dollar rate proposed on iron and steel was 5 cents more than the rail rate of 35 cents from Pittsburgh to Baltimore plus the water rate from Baltimore to the Pacific Coast of 60 cents. The differential represented the superiority of the rail service. Rates so arrived at were to be blanketed at all origins east of the point on which the rate was based, and also were to be blanketed westward and apply from all origins as far west as the Rocky Mountains.

The Transportation Act of 1920 had amended section 4 of the Interstate Commerce Act by adding a requirement that the Commission, in granting relief from section 4, should "not permit the establishment of any charge to or from the more distant point that was not reasonably compensatory for the service performed." The Commission in this case discussed the amendment of section 4 and formulated a definition of the phrase "reasonably compensatory". For a rate to be "reasonably compensatory", said the Commission, it "must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; and (4) not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the act." (p. 71).*

The rates proposed by the carriers in this case satisfied all of the foregoing criteria of "reasonably compensatory" except the last. The last condition is somewhat vague, but in the case at hand the failure of the carriers to satisfy this condition was based on the fact that collateral losses of revenue by the carriers would exceed the gains from the additional traffic carried. The Commission went to considerable length to show that since half the traffic covered by these applications was moving by rail at the higher rates, the loss of revenue by carrying this traffic at reduced rates would more than offset the gain from additional traffic which might be diverted from the water carriers.

The decision of the Commission denying fourth-section relief was not based entirely on the collateral loss of revenue which the railroads would suffer. Other considerations leading to denial of the ap-

* Section 15a, as enacted in 1920, provided that the Commission, in the exercise of its power to prescribe just and reasonable rates should establish rates that would enable the carriers as a whole, or as a whole in rate groups or territories, to earn an aggregate annual net railway operating income equal, as nearly as possible, to a fair return on the aggregate value of their property. Thus an essential requirement of a reasonably compensatory rate is that it will not leave the carrier with less net revenue than it would have obtained if competition had not been met. The various criteria that have been used by the Commission in determining whether rates are reasonably compensatory or not are described more fully in Appendix C, schedule 1, of this Submission.

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plication were the influence of section 500 of the Transportation Act of 1920, and section 3 of the Interstate Commerce Act.

Section 500 of the Transportation Act of 1920 declared it to be the policy of Congress "to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." In this connection the Commission said: "It clearly would defeat the intent of Congress to foster transportation by rail and water in full vigor if the rail carriers were permitted, at practically little or no profit to themselves, to operate so as to deprive water carriers of traffic which the water carriers would naturally handle." (p. 71).

Section 3 of the Interstate Commerce Act, prohibiting undue preference and prejudice, became involved in the case because of the particular rate adjustment proposed by the railroads. Several features of the proposed rates raised questions under section 3, the most obvious of which resulted from the proposed blanketing of the rates, making them applicable from interior points beyond the influence of combined rail and water rates via the Atlantic ports and the Panama Canal. From Chicago to the Pacific Coast, for instance, the rate on iron and steel would be the same as from Pittsburgh, whereas rail-water competition via Atlantic ports would only dictate a rate approximately as low as the rail rate from Chicago to the Atlantic seaboard plus the steamship rate via the Panama Canal. In the words of the Commission: "Wholly with the avowed purpose of inducing competitive shipments from Chicago or the Missouri River to the Pacific, the region west of Pittsburgh is accorded a preferential rate structure which is based on 'market competition'". (p. 82).

Although the Commission denied the principal application in this proceeding and required that transcontinental rates be maintained in conformity with the long-and-short-haul clause, minor exceptions were permitted.

The first exception related to rates over the Southern Pacific's rail-water "Sunset-Gulf route". The Southern Pacific was granted authority to maintain over this route, eastbound rates on asphalt, beans, canned goods, dried fruits and rice from California terminals to New York City only, while maintaining higher rates to, from, and between intermediate points. In making this exception to the general denial of fourth-section relief the Commission said: "The prejudice found by us to exist by reason of the wide blanketing of rates under the general westbound application is not here present. The collateral loss of rail revenue there involved is here negligible. We find that the rates proposed and the resulting charges will be reasonably compensatory." (p. 89).

The second exception to the general denial of fourth-section relief was on sulphur from Louisiana and Texas mines to California and north Pacific Coast terminals. A rate of 55 cents to California terminals and 65 cents to North Pacific Coast terminals was authorized to meet rail-water rates via the Gulf ports and the Panama Canal while higher rates were maintained to intermediate points. The Commission found that the proposed rates were reasonably compensatory and that collateral loss of revenue from the traffic hitherto moved by rail to the Gulf ports, was slight. (pp. 76-79). In a later case, however, the Commission denied an application to reduce the terminal rates by an additional 15 cents, holding that the lower rates were not shown to be "reasonably compensatory". (Sulphur to California Terminals, 100 I.C.C. 369 (1925)).

Transcontinental Wool Cases of 1922, 74 I.C.C. 99 (1922).

On the same day that the Commission denied fourth-section relief on transcontinental traffic generally it considered applications of the transcontinental railroads to maintain lower rates on wool from the Pacific Coast terminals to eastern markets, while maintaining higher rates from intermediate points in inter-mountain territory. Long-and-short-haul departures on wool had been authorized by the Commission in

1913. In Re Transportation of Wool, Hides, and Pelts. 23 I.C.C. 151; 25 I.C.C. 185; 25 I.C.C. 675. The rates on wool in grease, in bales, were \$1.50 from the Pacific Coast to Boston, while from Spokane they were \$2.00; from Boise, Idaho, \$2.25; from Butte, Montana, \$2.40, and from Salt Lake City \$2.36. The carriers now proposed a rate of \$1.35 from the coast. The water rate, exclusive of incidentals, was 90 cents. The Commission pointed out that wool was the only commodity moving in transcontinental traffic on which fourth-section relief still existed. The Commission said that it was extremely doubtful that there could be much, if any, profit over and above out-of-pocket costs in the proposed rates. It not only denied the application for additional fourth-section relief, but it rescinded the relief granted in 1913.

Commodity Rates to Pacific Coast Terminals, 107 I C.C. 421 (1926). Following the decision of the Commission denying fourth-section relief in Transcontinental Cases of 1922, (74 I C.C. 48), the rail carriers published the proposed reduced rates to the Pacific Coast terminals on many articles but, as was necessary because of the denial of fourth-section relief, observed them as maxima at intermediate points. On certain articles, rates slightly higher than the proposed terminal rates were published and also blanketed back to intermediate points. Now, because of increased competition through the Panama Canal, the western transcontinental railroads were making another application for fourth-section relief to enable them to lower their rates to the Pacific Coast terminals while maintaining existing rates at intermediate points.

The application differed from the 1921 application in two important respects. In the first place, the commodities on which reductions were proposed were not as numerous as in the earlier proceeding. in the second place, the territory of origin was confined to points directly served by the western railroads. The reductions proposed were from Chicago and other mid-western points, and covered products produced in the Middle-West which were also produced or manufactured on or near the Atlantic seaboard and which moved through the Panama Canal at rates

substantially lower than the all-rail rates from Middle-West points. On numerous iron and steel articles the rail rates from Group D, including Chicago, to San Francisco were \$1.00 per hundred pounds, and the rail rates proposed were 80 cents. On paper and various paper articles the Chicago-San Francisco rate proposed was \$1.00 as compared with the existing rate of \$1.25.

The Commission found that the proposed rates would more than cover the out-of-pocket costs of transporting the commodities by rail, and that with the exception of the rates proposed on ammunition, they were not lower than necessary to meet competition. The Commission, however, denied relief.

Refusal of the Commission to grant relief in this case seems to have been based on a number of considerations. Among these were doubts as to the additional traffic that would be diverted to the rail lines by the proposed reductions, particularly in view of the fact that the water lines and eastern railroads might make corresponding reductions in the rail-water rates from eastern manufacturing points. "We should be convinced", said the Commission, "that the adjustment proposed will result in the substantial benefits which its proponents anticipate." (p. 436). The loss of revenues to the eastern railroads, if the western railroads succeeded in diverting traffic, was noted; and mention was made of the Congressional declaration of policy in section 500 of the Transportation Act of 1920, which declares it to be the policy of Congress "to promote, encourage, and develop water transportation, service, and facilities and to foster and preserve in full vigor both rail and water transportation." The Commission also suggested, as in Transcontinental Cases of 1922, that the reduction of rates from Middle-West points might also create violations of section 3 of the Act by creating undue preference and prejudice.

Three commissioners, Esch, Aitchison, and Meyer, dissented from the decision, believing that fourth-section relief should have been granted.

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For the purpose of this review of long-and-short-haul discrimination and transcontinental rates this decision is important for two reasons. First, the Commission stood by its earlier decisions and refused to permit fourth-section departures from being introduced again in the transcontinental rate structure. Second, the denial of fourth-section relief in this case was based principally on the failure of the railroads to establish all of the points required by the Commission in justification of departures from the long-and-short-haul clause. This was the last attempt of the transcontinental railroads as a (see pp. 92-93 supra.) group to obtain fourth-section relief on a large scale.

Southern Pacific Transcontinental Cases, 182 I.C.C. 770

(1932). Although the transcontinental railroads as a whole have not sought general fourth-section relief on transcontinental traffic since the 1926 decision, the Southern Pacific Railway, in the case now to be described, made an attempt to obtain fourth-section relief in order to regain traffic for its rail-water, Sunset-Gulf route. It will be recalled that in Transcontinental Cases of 1922, 74 I.C.C. 48 (1922), (See pp. 91-96 supra.) the Commission, although generally denying the transcontinental railroads fourth-section relief, did permit the Southern Pacific to maintain lower rates eastbound on asphalt, beans, canned goods, dried fruits, and rice over the Sunset-Gulf route from California terminals to New York City than were maintained at intermediate points. These rates apparently failed to attract any appreciable amount of traffic. The Southern Pacific therefore sought additional fourth-section relief in order to make substantially lower rates to and from the Pacific Coast terminals on a large number of commodities. Reductions were proposed on 820 westbound items, and on 200 eastbound items. The westbound rate on canned goods via the Sunset-Gulf route was proposed to be reduced from 106 cents to 57.5 cents per hundred pounds. In general the rates proposed were slightly less than 10 per cent above the cost of shipping by water through the Panama Canal.

The Commission, with one commissioner dissenting, denied fourth-section relief. Relief was denied largely on the grounds that

the reduced through rates proposed would be less than reasonably compensatory. The Commission noted that the proposed rate on canned goods from New York to California terminals was only 57.5 cents for a haul of 2,000 miles by rail and 2,100 miles by water, and that this was a half cent lower than the Commission had prescribed as reasonable for a haul of 460 miles between points in Southwestern territory.

Summary. The period from 1918 to 1932 was characterized by a number of developments:

(1) The railroads were unsuccessful in several attempts to restore long-and-short-haul departures in the transcontinental rate structure.

(2) An effort on the part of inter-mountain territory to obtain lower commodity rates from the east than applied from the same origins to the Pacific Coast ports was unsuccessful.

(3) the refusal of the Commission to grant fourth-section relief to the transcontinental rail carriers as mentioned in paragraph (1) above, was influenced by the following considerations:

- a. failure of the carriers in some instances to prove that the reduced through rates would be reasonably compensatory for the service performed;
- b. failure of the carriers to demonstrate in some instances that they would gain additional revenues by the reductions;
- c. the fact that the rate structure proposed in some of the cases would possibly create violations of section 3 of the Act which prohibits undue preference and prejudice;
- d. the influence of section 500 of the Transportation Act of 1920 which declares it to be the policy of Congress to preserve both rail and water transportation "in full vigor".

(4) There were a few minor exceptions to the general denial of fourth-section relief. These were as follows: sulphur from Louisiana and Texas mines to California and North Pacific terminals; asphalt, beans, canned goods, dried fruits, and rice when moving eastbound from California terminals to New York City only, and only over the rail-water route of the Southern Pacific known as the Sunset-Gulf route.

E. The Period from 1932 to Date

The attempt of the transcontinental railroads to obtain fourth-section relief in 1926 on a large number of commodities moving between eastern points and the Pacific Coast, and the later attempt of the Southern Pacific to obtain fourth-section relief for its Sunset-Gulf route, were the last attempts to reintroduce fourth-section departures in the transcontinental rate structure on a large scale. The way is open however, for the railroads to seek fourth-section relief again at any time that they so desire and feel that they can make the required showing before the Commission that is necessary. Since 1932 there have been a few fourth-section applications involving transcontinental rates, but each has involved but a single commodity or closely related commodities. In one of these cases fourth-section relief was denied; in the others it was granted. Each of these cases will be briefly described.

Sugar Cases of 1933, 195 I.C.C. 127 (1933), and related cases. Sugar Cases of 1933 was a comprehensive revision of rates on sugar from practically all refining points to points in Central Territory. It included a fourth-section application by transcontinental lines to reduce rates on sugar from San Francisco Bay points to Chicago, Milwaukee, and St. Louis and related points without reducing rates to intermediate points. This fourth-section application had been previously denied in Transcontinental Eastbound Sugar, 186 I.C.C. 523 (1932), on the grounds that the proposed rate of 62 cents was less than reasonably compensatory. On re argument in Sugar Cases of 1933, however, relief was granted to

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permit the establishment of a 65-cent rate. Three commissioners dissented. The reduced rates proposed were to meet a water rate of about 56 cents from San Francisco Bay points to Chicago by the Panama Canal, Hudson River, New York State Barge Canal, and the Great Lakes to Chicago, and a rate of about 67.5 cents to St. Louis via the Panama Canal and the Mississippi River. The Commission was convinced of the compensatory character of the 65-cent rate, and of the need of the carriers for such relief to attract sugar from the water routes. Later, in Sugar from California to Chicago, 211 I.C.C. 239 (1935), additional relief was granted because the 65-cent rate did not result in increasing the traffic carried by the railroads. The Commission authorized a 60-cent rate, minimum 80,000 pounds, and a 65-cent rate, minimum 60,000 pounds, to Chicago. In this case, the Commission adopted the device of "flexible relief", that is, it provided that if the all-water rates were reduced an equal reduction could be made in the rail rates, subject to the condition that in no case should the rail rate be reduced below 50 cents in connection with the 80,000-pound minimum and 55 cents in connection with the 60,000-pound minimum. Three commissioners dissented. Subsequent changes have occurred in these rates, and they were recently before the Commission again in Sugar to Illinois Territory and Cincinnati, Ohio, and fourth-section relief was again granted. 270 I.C.C. 699 (1948).

Transcontinental Westbound Automobile Rates, 209 I.C.C. 549 (1935). This was an unsuccessful attempt to obtain fourth-section relief on automobiles from Detroit and other eastern producing points to California ports. Because of an increasing movement of new automobiles by rail to eastern ports and thence by water to the Pacific Coast, the railroads requested fourth-section relief to reduce through rates. The existing all-rail rate from Detroit to California ports was \$4.65 per hundred pounds. From Detroit to California ports the rate via rail and water through Baltimore was \$3.52. The railroads proposed to reduce the rate of \$4.65 to \$3.82 - thirty cents above the rate via the Panama Canal.

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The Commission denied the application with one commissioner dissenting. The Commission did not specifically find that the proposed rates were less than reasonably compensatory, although the statement of the Commission that "Many of the proposed routes are circuitous, and even a moderate reduction of the present rates on traffic over those routes would not be reasonably compensatory" (p. 559) clearly signifies that the proposed rates were less than reasonably compensatory over most of the routes proposed. The principal reason for denying the application, however, was the failure of the railroads to show that they would gain by the proposed reductions. "Where, as here", the Commission said, "the attempted justification is founded upon a result, supposed to follow such action, the definite burden is upon them to show that the contemplated action is reasonably calculated to bring about the intended result, and will not fall short thereof." (p. 559).

The Commission went on to say:

"Applicants are before us seeking permission to depart from the long-and-short-haul provision, and attempt to justify our sanction of such departures on the ground that it will enable them to increase their inadequate revenues. They are proposing rate reductions upon important traffic to certain points. It is not sufficient for them to show the probability of regaining some of the traffic on the commodity between such points which now is lost to the water-competitive route, or that they will retain some traffic which might be lost were the rates not reduced. More traffic does not necessarily mean more net revenues, for the rate will be reduced. On them is the positive burden of showing that their action in reducing the rates is at least likely to produce more net revenues than would be earned under the present rates, upon the amount of traffic which can be expected in the future if the present basis of rates is maintained. They have no right to expect relief from the provisions of section 4 merely to take traffic away from the water lines, if the result will be no net gain to the railroads, but loss certainly to the water lines, and in all probability to both." (pp. 559-560).

Soya Bean Meal to Pacific Coast Ports, 225 I.C.C. 51 (1937).

In this case the railroads proposed a rate of 57.5 cents per hundred pounds on soya-bean meal, minimum 80,000 pounds, from Illinois and other mid-western producing areas to Pacific Coast ports without observing the long-and-short-haul clause. The reduced rate was designed to enable the railroads to meet rates via the Panama Canal,

and also to meet market competition arising from the importation of soya-bean cake and meal from the Orient.

The Commission granted fourth-section relief, but required a 60-cent rate instead of the 57.5-cent rate, and restricted the application to reasonably direct rail routes. There was no question concerning the compensatory character of the reduced rate but the 57.5-cent rate proposed was somewhat lower than necessary to meet water competition, hence the 60-cent rate was substituted. There was apparently no question raised with respect to the benefits that would accrue to the railroads from the reduced through rates.

In a supplemental report, 231 I.C.C. 411 (1939). additional relief was granted to permit the reduced rates, which had now become 63 cents, from the same origin groups to certain additional Pacific Coast ports.

Canned Pineapples to Chicago & Milwaukee, 235 I.C.C. 557 (1939). This case represents another, and so far as we know, the last of the exceptions to the fact that transcontinental rates conform to the long-and-short-haul clause. Relief was requested by rail carriers to maintain a 70-cent import rate on canned pineapples and pineapple juice from Pacific Coast ports to Chicago and Milwaukee, instead of the existing rates of 80 cents, minimum 60,000 pounds, and 97 cents, minimum 40,000 pounds, while maintaining the latter rates to intermediate destinations in Western Territory. The reduced rate was to meet transportation costs from the Hawaiian Islands to North Atlantic ports, thence by charter or other contract service by way of the Hudson River, the Erie Canal, and the Great Lakes to Chicago. Total shipping costs via this ocean-canal-lake route to Chicago were from 96.25 to 98.25 cents per hundred pounds, depending on the method of delivery at destination. The minimum cost of shipping from the Hawaiian Islands through San Francisco to Chicago was 110.45 cents. Under the proposed 70-cent rate the water-rail transportation costs through San Francisco would be reduced to 100.45 cents per hundred pounds. Fourth-

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section relief, with some restrictions, was granted. The proposed rates were found reasonably compensatory.

Summary. The fourth-section cases involving transcontinental rates which have been decided since 1932 have each involved a specific commodity or closely related commodities. In one case fourth-section relief was denied on autos; in three cases limited relief was granted on sugar, soya-bean meal, and canned pineapple.

In the case in which the Commission denied relief the denial was based in part on the doubtful compensatory character of the proposed through rates, and in part on the failure of the railroads to show that they would be likely to gain additional net revenues from the proposed reduction in the through rate.

In the cases in which fourth-section relief was granted the Commission was satisfied of the compensatory character of the proposed rates, and also that the railroads could reasonably be expected to gain from the proposed reductions which were designed to meet effective water competition, or market competition.

F. General Summary

The history of the transformation of the transcontinental rate structure from one which was characterized by higher rates on a vast scale to and from inter-mountain territory than applied to and from the Pacific Coast to one which conformed to the long-and-short-haul clause of the Interstate Commerce Act, with only a few minor exceptions authorized by the Commission, has been related in the preceding pages. This summary may to advantage be divided into two parts: first, a summary of the facts with respect to the modification of the rate structure; and second, a summary of the policies observed by the Interstate Commerce Commission in dealing with these cases.

So far as the facts about the modification of the rate structure are concerned, the previous discussion may be summarized

as follows:

(1) Some modification of the transcontinental rate structure in the direction of eliminating or modifying some instances of discrimination against inter-mountain territory took place in the period between 1887 and 1897 as a result of Commission decisions and of efforts of the railroads to comply with the Act to Regulate Commerce.

(2) In the period from 1897 to 1910 judicial interpretation had rendered the long-and-short-haul clause largely ineffective, and such modification of the transcontinental rate structure in the direction of reducing discrimination against intermediate points came, for the most part, as a result of findings of the Commission that rates at intermediate points were unreasonably per se under section 1 of the Act, rather than that they violated section 4.

(3) Between 1910 and 1918 transcontinental rates were finally brought into conformity with the requirements of the long-and-short-haul clause as a result of a series of decisions of the Commission under section 4 as revived and strengthened by Congress in 1910.

(4) Between 1918 and 1932 several attempts of the transcontinental railroads to restore long-and-short-haul departures on a comprehensive scale in the transcontinental rate structure were unsuccessful. A few minor departures from the prohibitions of the long-and-short-haul clause, however, were authorized by the Commission.

(5) Since 1932 there have been no attempts by the railroads to obtain fourth-section relief on a large scale on transcontinental traffic. There have been a few instances in which the railroads have applied for fourth-section relief on a single commodity or group of closely related commodities moving as transcontinental traffic. In three of these instances limited relief was granted; in one, relief was denied.

(6) The transcontinental rate structure today is in general conformity with the provisions of section 4 which prohibit higher charges for shorter than for longer hauls over the same line, and in the same direction, the shorter being included within the longer distance. The few exceptions authorized by the Commission are as noted in earlier pages.

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(7) The way remains open for the railroads to obtain fourth-section relief on transcontinental traffic at any time that they believe that it is in their interest to do so, provided adequate justification of their proposals can be shown.

We may now turn to a summary of the principles observed by the Commission in fourth-section cases. Attention has been directed to these principles in the discussion of the transcontinental fourth-section cases which have been reviewed in the earlier part of this statement. These principles, it should be pointed out, are no different than the principles observed by the Commission in other fourth-section cases. It is true that certain issues have arisen in some of the transcontinental fourth-section cases that do not arise in most fourth-section cases, but it cannot be said that the Commission has adopted any different principles or policies in transcontinental cases than in other fourth-section cases. These principles may be summarized as follows: In order to obtain relief from the prohibitions of section 4 to charge a higher rate for a shorter than for a longer haul over the same line, in the same direction, the shorter being included in the longer distance, a carrier must show:

- (1) That the reduced through rate is less than normal over its line or route and is compelled by conditions beyond its control, normally by competition of some sort;
- (2) That the reduced rate covers and more than covers the extra or additional expense incurred in handling the traffic to which it applies;
- (3) That the reduced through rate is no lower than necessary to meet the competition encountered and is not so low as to threaten the extinction of legitimate competition;
- (4) That the competition alleged to justify the reduced through rate is actual and not merely potential;
- (5) That there is reasonable prospect that the carrier will gain by the reduced rates, i.e. that additional revenues derived from the added traffic will not be offset by collateral losses of revenue; and
- (6) That the rates at intermediate points are reasonable in

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themselves under section 1 of the Act.

Although the application of these principles to a particular state of facts is not always free from difficulty, it is clear that they are designed to prevent departures from the long-and-short-haul clause that are not justified, but at the same time to permit relief from the prohibitions of the section when such relief is justified.

G. The Present Status of the Transcontinental Rate Adjustment

As previously noted, the rail carriers may at any time apply for fourth-section relief on transcontinental traffic. If they should do so it is safe to predict that the Interstate Commerce Commission will decide the case in conformity with the general principles outlined above which have been evolved over a period of years in deciding thousands of applications under the fourth section.

Certain developments which have occurred during and after World War II have a bearing on possible adjustments of transcontinental rail rates in the future. In 1946 the Commission instituted an investigation of transcontinental rail rates and of intercoastal steamship rates. Dockets 29663 and 29664. These investigations were undertaken as a result of a petition filed by the United States Maritime Commission and the War Shipping Administration which alleged that successful and profitable operation of domestic shipping services was not possible unless increases were made in competitive rail rates. The difficulty of the intercoastal carriers seems to be that increases in operating costs make it impossible for them to operate profitably without increases in rates. Water rates cannot be increased however, if rail rates which were established to meet water competition when steamship costs and rates were much lower, are to remain at their old levels. Although this proceeding is still on the Commission's docket, the Commission permitted the rail carriers in 1947 to increase the transcontinental rates which were in effect on June 30, 1946, by 25 per cent, instead of by the 20 per cent which had

been authorized as a general rate increase in Ex Parte 162 266, I.C.C. 567. See Transcontinental Rail Rates, 268 I.C.C. 567 (1947). In so doing the Commission commented on the very great increases in operating costs that the steamship lines had incurred. The Commission then said: "For this reason it appears that competition from the intercoastal ships will probably have much less effect on transcontinental rail rates than it has in the past." (pp. 572-573). The difficulties of the water carriers were also pointed out by the Commission in its Annual Report for 1948. The Commission said: "In the coastwise and intercoastal trades, the steamship companies which took over the operations discontinued by the Maritime Commission on July 1, 1947, made little progress toward the revival of their prewar operations." (p. 47). The Commission pointed out that intercoastal services had been curtailed, and that one of the intercoastal common carriers had suspended its services in that trade. (p. 47). It noted that approximately 60 vessels were now being operated on round voyages in common-carrier intercoastal service, which was about one-third the number in such service before the war. (p. 48). In another place in its report, the Commission, after pointing out the problems facing the water carriers, said: "Changed conditions make it necessary to add, in frankness, that in some respects the prewar pattern of operations may be beyond restoration." (p. 6) In discussing the relation between rail and water rates the Commission said:

"Water transportation has always had some influence on rail rate structures. In recent decades, its lower costs have forced many downward adjustments of rail rates, particularly in transcontinental and certain coastwise rates.....Recent large increases in water-carrier costs, coupled with the difficulties experienced by some branches of the industry in restoring services interrupted by the war, have caused reversal of the competitive position of water and rail carriers."

The Commission then went on to point out that water carriers claimed that many rail rates, even as recently increased, were depressed, and that the water carriers could not compete with the railroads on a profitable basis unless the water lines are permitted to make considerable increases in their rates, but that they cannot do so and obtain or retain

traffic "unless there be a widening, or at least no lessening of the differentials between rail and water rates on the commodities which afford the principal and most attractive tonnage for the water lines." (p. 52). This is one of the issues in Dockets 29663 and 29664. What the outcome of these proceedings will be, the future will determine. It seems clear however, that intercoastal steamship competition is a much less potent influence in compelling low transcontinental rail rates than it was for many years prior to World War II. This condition of affairs may not continue forever but under the present law the rail carriers are in a position to seek fourth-section relief on transcontinental traffic if water competition should again become sufficiently strong.

Part IV CONCLUSIONS AND RECOMMENDATIONS.

Parts I and II of this Brief have outlined the history of long-and-short-haul discrimination in Canada. An examination and analysis has been made of the relevant sections of the Railway Act, the judgements of the Board of Transport Commissioners, the attitude of the railroads and the effect of long-and-short-haul discrimination upon intermediate points. It is our submission that in the matter of long-and-short-haul discrimination the practice which has been followed, in dealing with this particular type of discrimination is most unsatisfactory. Deficiencies in the Railway Act and the lack of concise and logical administrative rules established by the regulatory body combine to produce this unsatisfactory condition.

Section 314, subsection 5 of the Railway Act prohibits the practice of long-and-short-haul discrimination unless the Board is satisfied that it is expedient to allow it. It is our submission that this manner of dealing with what is universally recognized as one of the most difficult rate regulation problems leaves much to be desired. We believe that the statute which charges an administrative body with duties as onerous as those of regulating railroad transportation should state the policy of the Administration in unmistakably clear language. It is not sufficient to leave wide areas of control in the hands of the appointed tribunal.

In our submission the judgements of the Board of Transport Commissioners in the matter of long-and-short-haul discrimination do not seem to be consistent. No well-defined policy has been established as to when long-and-short-haul discrimination is justifiable and when it is not. In addition long-and-short-haul departures are permitted without investigation.

It would appear that the net effect of leaving such an important phase of policy in the hands of the tribunal has been to permit dissimilar treatment under similar conditions. It would also appear that when the tribunal takes a negative attitude in the matter of such policy

the effective determination of these matters in fact passes into the hands of the carriers. In our submission none of these things are desirable.

In Part III of the Brief, we detail the administrative and statutory history of the long-and-short-haul rule in the United States. In that country a solution has been devised which effectively prevents long-and-short-haul discrimination where it cannot be clearly justified, but which permits it where such justification is definitely established.

In our submission the manner in which this problem has been solved in the United States can be adapted to the needs of the situation in Canada. We submit that this Commission should recommend that long-and-short-haul discrimination in Canada be prohibited subject to the provision that the Board upon formal application of the carrier seeking to practise long-and-short-haul discrimination, after hearing may allow such discrimination provided that the carrier satisfies the Board that:

1. There is active and compelling competition at the competitive point which is beyond the control of the applicant carrier and such competition is absent at the intermediate point.
2. The rate which is proposed for the competitive point more than covers the additional expense incurred by the traffic to which it applies.
3. The rate to the intermediate point is just and reasonable.
4. The rate to the competitive point is not lower than necessary to meet the competition.
5. The carrier can show a reasonable expectation of improved net earnings as a result of charging the competitive rate.

Selected Commodity Rates
Applicable from Eastern Canada to British Columbia Coast Ports

1918 - 1948

COMMODITY	From Rate Group	To points taking Rate Basis	C.R.C. 14 Aug. 1, 1918	Supp. 20 Sept. 13/20 Gen. Incr. 33%	C.R.C. 60 Jan. 1/21 Nov. 30/21	Supp. 12 Nov. 30/21
Acids, N.O.I.B.N. liquid	A ★ B ★	1 ★ 1	219 225½	292 200½	- -	- -
Ammonia Aqua	A B	1 1	- -	- -	- -	208½ 217
Dyestuffs N.O.I.B.N.	A B	1 1	219 225½	292 300½	- -	- -
Toilet Paper	A B	1 (a) (b)	131½ 169	175½ 225½	- -	- -
Wrapping	A B	1 (c) (d) (e) (f)	138 175½ 125 131½ 155 144	184 234 166½ 175½ 206½ 192	183½ - - - - -	- - - - -
	B	1 (c) (d) (e) (f)	131½ 138 163½ 150	175½ 184 218 200½	175 183½ 217½ -	- - - -

--- Aqua Ammonia not included in this tariff series under Distinctive Heading prior to Nov. 30, 1921. Item prior to that date covered only anhydrous ammonia. Aqua ammonia prior to that date would be classified under chemicals, drugs and medicines. N.O.I.B.N.

★ Rate Groups: A - Toronto Area; - B - Montreal area.
Rate Basis 1 - Vancouver area

Commodity	From Rate Group	To Points taking Rate Basis	C.R.C. 1918	14 Supp. 1919	10 Supp. 1919	20 C.R.C. 1921	60 Supp. 1921	7 Supp. 1921	12 Supp. 1921
Axes	A	1	(i) 187½	(i) 187½	250	-	-	-	-
			(j) 137½	(j) 137½	183½	-	-	-	-
	B		(i) 194	(i) 194	258½	-	-	-	-
			(j) 144	(j) 144	192	-	-	-	-
Builders' Hardware	A	1	125		166½	-	-	-	-
N.O.I.B.N.	B	1	131½		175½	175			
Barbed Wire	A	1	125		166½	-	(2) 105	-	-
	B	1	131½		175½	175		-	-
Structural iron & steel	A	1	(o) 131½	(o) 131½	175½	-	-	-	-
-fabricated or unfabricated	B	1	(p) 125	(p) 125	166½	-	-	-	-
			(o) 138	(o) 138	184	183½			
			(p) 131½	(p) 131½	175½	175			
Lead (for paint)	A	1	125		166½	-	-	-	-
-Red or White	B	1	131½		175½	175		-	-
Canned Goods	A	1	(q) 125	(q) 125	166½	-	-	-	-
			(r) 151½	(r) 151½	202	-	-	-	-
			(q) 131½	(q) 131½	175	-	-	-	-
			(r) 158	(r) 158	210½	-	-	-	-
Vehicle Parts (10)			258½	300½	400½	394½			
			(11) 205½	239½	319½	314			
			176	204½	272½	268			
Dry Goods - cotton piece	A	1	144		192	-	-	-	-
	B	1	150½		200½	-	-	-	-

(Prior to C.R.C. 665 - Supp. 25, effective May 11/36
 (there was no item covering "Builders' Hardware NOIRN"
 (in this tariff series. Rates shown prior to that date
 (would only cover Door Hangers, Hasps, Hinges, Staples,
 (Connecting Links, Door Bolts, Steel Brackets, Butts,
 (Cupboard Catches, Lap Links, Cupboard Turns, Gate Hooks,
 (Hooks NOS, Hoop Keys, Door Latches, Sash Pulleys and
 (Door Track.

(2) Min. 80,000 lbs. - applicable on Iron Ware,
 Coppered, galvanized, trimmed or plain, including
 barbed wire and bale ties.

(10) Rates on this commodity from August 1, 1918,
 to Jan. 15, 1926, applied from Ford, Oshawa and
 Walkerville, Ont., to Vancouver, B.C. only. Class
 rates applied from and to all other points.

(11) Each rate applied on a large group of parts

COMMODITY	From Rate Group	To points taking Rate Basis	Supp. 13 Dec. 1/21 Gen. Decr. 7 ^{15/8}	C.R.C. 96 Apr. 20 1922	Supp. 7 Sept. 26 1922	Supp. 9 Nov. 7/22 1922	Supp. 10 Dec. 1, 1922	
Acids, N.O.I.B.N. -liquid	A	1	270	-	-	-	-	
	B	1	278	-	-	-	-	
Ammonia- Aqua	A	1	193	-	-	-	-	
	B	1	201	-	-	-	-	
Dyestuffs N.O.I.B.N.	A	1	270	-	-	-	-	
	B	1	278	-	-	-	-	
Toilet Paper	A	1	162	-	(a) 150	-	-	
		1	208 $\frac{1}{2}$	-	-	-	-	
	B	1	170	-	(a) 157 $\frac{1}{2}$	-	-	
		1	216 $\frac{1}{2}$	-	-	-	-	
Wrapping Paper				-	120 (1)	-	-	
	A	1	154	-	(c) 150	-	-	
		(d)	162	-	-	-	-	
		(e)	191	-	-	-	-	
		(f)	177 $\frac{1}{2}$	-	-	-	-	
		(c)	162	-	(c) 157 $\frac{1}{2}$	-	-	
		(d)	170	-	-	-	-	
		(e)	201 $\frac{1}{2}$	-	-	-	-	
		(f)	185 $\frac{1}{2}$	-	-	-	-	

(1) Min. 50,000 lbs. (this rate in effect until July 31/33 when it became effective on 40,000 lb. min. car. (CFA I.C. - C.R.C. 96 - Item 1479))

COMMODITY	From Rate Group	To points taking Rate Basis	Supp. 13 Dec. 1/21 Gen. Decr. 7 ¹⁴ / ₃₂	C.R.C. 96 April 20 1922	Supp. 7 Sept. 26 1922	Supp. 9 Nov. 7/22 Dec. 1 1922	Supp. 10 Dec. 1 1922
Axes	A	1	(i) 231 ¹ / ₂	-	-	(j) 125	-
	B		(j) 169 ¹ / ₂	-	-	(j) 144	-
			(i) 239 ¹ / ₂	-	-		-
			(j) 177 ¹ / ₂	-	-		-
Builder's Hardware N.O.I.B.N.	A	1	153	-	-		150
	B	1	161	-	-		157 ¹ / ₂
Barbed Wire	A	1	105	-	75(3)	75(4)	-
	B	1	162	-	-	-	-
Structural Iron & Steel -fabricated or unfabricated	A	1 (o)	162	-	-	-	-
		1 (p)	154	-	-	-	-
	B	1 (o)	170	-	-	-	-
		(p)	162	-	-	-	-
Lead (for A paint) - Red B or White	A	1	154	-	-	-	-
	B	1	162	-	-	-	-
Canned Goods	A	1	(q) 154	-	(q) 150	-	-
		(r)	187	-	(r) 202	187	-
	B	1	(q) 162	-	(q) 158	-	-
		(r)	195	-	(r) 210 ¹ / ₂	195	-

(3) Min. 80,000 lbs. - Applicable on barbed wire only, Group A to Pac. Coast points
 (4) Min. 80,000 lbs. - Applicable on wire as described in (2) from Group A



COMMODITY	From Rate Groups	To Points taking Rate Basis	Supp. 13 Dec. 1/21 Gen. Decr.	Supp. 13 Jan. 20, 1922	C.R.C. 96 Apr. 20 1922	Supp. 7 Sept. 26 1922	Supp. 9 Nov. 7 1922	Supp. 10 Dec. 1, 1922
			$71\frac{1}{2}\%$					
Vehicle				$370\frac{1}{2}$	$364\frac{1}{2}$	-	-	-
Parts				$295\frac{1}{2}$	$290\frac{1}{2}$	-	-	-
-Self Propelling				252	248	-	-	-
Dry Goods	A	1	$177\frac{1}{2}$	-	-	-	-	-
-Cotton Piece	B	1	$185\frac{1}{2}$	-	-	-	-	-

COMMODITY	From Rate Group	C.R.C. 256 Jan. 15, 1926	Supp. 1 Feb. 8, 1926	Supp. 8 Oct. 28, 1926	Supp. 30 Feb. 25, 1929	C.R.C. 466 May 26, 1930	Supp. 9 Dec. 7, 1931
Acids - N.O.I.B.N. -liquid B	A B	270	-	-	-	-	-
Ammonia - Aqua B	A B	193	-	-	-	193	-
Dyestuffs N.I.O.B.N.	A B	270	-	-	-	-	-
Toilet Paper	A B	(a) 150 (b) 208½	-	-	-	(b) -	160
Wrapping Paper	A B	(c) 150 (g) 162	-	-	-	-	-
Axes	A B	(i) 231½ (j) 125	-	-	(b) 242	-	-
Builders' Hardware N.O.I.B.N.	A B	150	-	-	-	-	-
Barbed Wires	A B	(5) 75 154	-	-	-	-	-

(5) Rate of 75¢ cwt. extended to include
Group B points of origin for same
commodities and minimum weight as (4)

COMMODITY	From Rate Group	C.R.C. 256 Jan. 15, 1926	Supp. 1 Feb. 8, 1926	Supp. 8 Oct. 28, 1926	Supp. 30 Feb. 25 1929	C.R.C. 466 May 26/30	Supp. 9 Dec. 7 1931
Structural Iron & Steel - fabricated or unfabricated	A B	(o) 162 (p) 154	- -	- -	- -	- -	- -
Lead (for paint) Red or White	A B	154	-	-	-	-	-
Canned Goods	A B	(q) 126 (r) 151	- -	- -	- -	- -	- -
Vehicle Parts -Self Propelling		(a) No (t) Commodity Rate Quoted this date	183 (u) 152 (v)	195 189	- -	- -	- -
Dry Goods -Cotton Piece	A B	177½	-	-	-	-	-

COMMODITY	From Rate Group	To points taking Rate Basis	Supp. 10 June 22, 1932	Supp. 14 July 11, 1932	Supp. 16 Sept. 26, 1932	Supp. 18 Nov. 1, 1932	Supp. 22, Mar. 13, 1933
Acids N.O.I.B.N. -liquid	A B	1	-	-	-	-	-
Ammonia - Aqua	A B		-	125	-	-	-
Dyestuffs N.O.I.B.N.	A B	-	-	-	-	-	-
Toilet Paper	A B	-	-	-	-	-	-
Wrapping Paper	A B	-	-	-	-	-	-
Axes	A	(1)	150	-	-	-	-
Builders' Hardware	A B	-	-	-	-	-	-
Barbed Wire	A B	-	-	-	-	-	-

COMMODITY	From Rate Group	To Points taking Rate Basis	Supp. 10 June 22, 1932	Supp. 14, July 11, 1932	Supp. 16 Sept. 26, 1932	Supp. 18, Supp. 22 Nov. 1, Mar. 13, 1932 1933
Structural Iron & Steel fabricated or unfabricated	A B		- -	- -	- -	- -
Lead (for paint) - Red or White	A B		- -	- -	125 -	- -
Canned Goods	A B		- -	- -	(q) 105	- -
Vehicle Parts -Self Propelling	A		-	-	-	-
Dry Goods Cotton Piece	A B		- -	- -	- -	- -

COMMODITY	From Rate Group	TO	C.R.C. 665 June 30 1933	C.R.C. 665 July 26 1933	Supp. 1 July 31 1933	C.R.C. 665 Supp. 2 Aug. 31/33	C.R.C. 896 July 27, 1936	Supp. 28 Dec. 1 1939
Acids N.O.I.B.N.	A B	- Br. Col.	-	-	-	150	-	170
Ammonia - Aqua	A B	Pac. Coast Ports	-	-	-	-	-	170
Dyestuffs N.O.I.B.N.	A		-	-	-	150	-	170
Toilet Paper	A B		-	- (a)	120	-	-	-
Wrapping Paper	A B		-	- (b)	120	-	-	-
Axes	A (i) B		125	-	-	-	- (i)	185
Builder's Hardware N.O.I.B.N.	A B		-	-	-	-	-	185

11884

COMMODITY	From Rate Group	TO	C.R.C. 665 June 30 1933	C.R.C. 665 July 26 1933	Supp. 1 July 31, 1933	Supp. 7 Apr. 26 1934	Supp. 18 July 29 1935	C.R.C. 896 July 27, 1936	Supp. 4 Jan. 12 1937	Supp. 28 Dec. 1, 1939
Barbed Wire	A B		- -	- -	- -	- -	(6) (k) (i)	150 125 75	- -	- -
										(6) Min. 30,000 lbs. covering iron and steel articles including barbed wire.
Structural Iron & Steel -fabricated or unfabricated	A B	(7)	154	- -	- -	- -	(p)	150	- (8) 100	- -
										(7) Min. 40,000 lbs. Rate of 162 cwt. Min. 40,000 lbs. eliminated by this item.
Lead (for paint) - Red or White	A B		- -	- -	- -	- -	75	- -	- (9)	150 125
Canned Goods	A B		- -	- -	(9)	90	- (q)	- 150	- -	- -
										(8) Min. 50,000 lbs. (9) Min. 60,000 lbs.
Vehicle Parts -Self Propelling	A B		- -	- -	- -	- -	- -	- -	- -	- -
Dry Goods -Cotton Piece	A B		- -	- -	- -	- -	- -	175 -	- -	- -

11835

COMMODITY	From Rate Group	Supp. 30 Jan. 1, 1940	Supp. 44 Nov. 27 1940	Supp. 45 Feb. 1, 1941	C.T.C. 1312 Sept. 15, 1941	Supp. 65 Apr. 8/48 Gen. Inc. 1948	Supp. 67 May 31 1948	Supp. 71 Sept. 15 1948
						21%		
Acids N.O.I.B.N. - Liquid	A B	- -	- -	- -	- -	General freight increase 21%	- -	237
Ammonia - Aqua	A B	- -	- -	- -	- -	206	- -	237
Dyestuffs N.O.I.B.N.	A B	- -	- -	- -	- -	206	- -	237
Toilet Paper	A B	(a) 150 (b) 200	- -	- -	- -	182 (a) 242	150	209 278
Wrapping Paper	A B	(a) 150	- -	- -	- -	182	- -	209
Axes	A B	- -	- -	- -	- -	224	- -	258

11836

COMMODITY	From Rate Group	Supp. 30 Jan. 1 1940	Supp. 44 Nov. 27 1940	Supp. 45 Feb. 1 1941	C.T.C. 1312 Sept. 15 1941	Supp. 65 Apr. 8/48 Gen. Inc. 214	Supp. 71 Sept. 15 1948
Builders' Hardware N.O.I.B.N.	A B	- -	- -	- -	- -	224	258
Barbed Wire	A B	- -	- 100 (l)	- 95	- (k) -	151 115 121 182	174 132 139 209
Structural Iron & Steel -fabricated or unfabricated	A B	- -	(8) 125	- -	- -	182 (8) 152	209 (8) 174
Lead (for paint) - Red or White	A B	- -	- -	- -	- -	182 152	209 174
Canned Goods	A B	- -	- -	- -	(q) 96 -	116 182	133 209

COMMODITY	From Rate Group	Supp. 30 Jan. 1 1940	Supp. 44 Nov. 27 1940	Supp. 45 Feb. 1 1941	C.T.C. 1312 Sept. 15, 1941	Supp. 65 Apr. 8/48 Gen. Inc. 21%	Supp. 71 Sept. 15 1948
Vehicle Parts	A	-	-	-	-	236	271
-Self Propelling	B	-	-	-	(v)	229 221 184	263 254 212
Dry Goods	A	-	-	-	-	212	244
- cotton piece	B	-	-	-	-	-	-

Reference Notes

- (a) This is a broad classification covering most types of paper.
Minimum carload weight -- 40,000 lbs.
- (b) This is a smaller class - toilet, crepe and similar types of paper.
Minimum carload weight -- 26,000 lbs.
- (c) A fairly broad classification of types of paper but smaller than (a).
Minimum carload weight -- 40,000 lbs.
- (d) Glazed, oiled and waxed wrapping paper only. Not printed.
Minimum carload weight -- 36,000 lbs.
- (e) Same as above but printed.
- (f) This is a small class covering mainly "left-overs" from other classifications.
- (g) Combination of (d) and (i).
Minimum carload weight -- 36,000 lbs.
- (h) Same as (g) but with minimum carload weight -- 30,000 lbs.
- (i) This and (j) are much the same classification.
Minimum carload weight -- 30,000 lbs.
- (j) Much the same as (i).
Minimum carload weight -- 50,000 lbs.
- (k) This is a small class covering wire gates, staples etc.
Minimum carload weight -- 30,000 lbs.
- (l) Another group containing wire and wire goods but mainly wire rope and cables.
Minimum carload weight -- 80,000 lbs.
- (m) Same as (l).
Minimum carload weight -- 50,000 lbs.
- (n) This is a broad class covering various items of iron and steel.
Minimum carload weight -- 30,000 lbs.
- (o) Minimum carload weight -- 40,000 lbs.
- (p) Same class as (o).
Minimum carload weight -- 50,000 lbs.
- (q) Minimum carload weight -- 40,000 lbs.
- (r) Same class as (q)
Minimum carload weight -- 50,000 lbs.
- (s) These three classes contain all self-propelling vehicle parts,
(t) various parts falling under different rates. Minimum carload
(u) weight -- 60,000 lbs.
- (v) Springs only.

11040

APPENDIX A

Schedule 2

WATER-BORNE SHIPMENTS TO EASTERN CANADA FROM THE PORTS OF VANCOUVER

AND NEW WESTMINSTER 1928 - 1947

<u>Year</u>	<u>Port of Vancouver</u>	<u>Port of New Westminster</u>	<u>Total</u>
	TONS	TONS	TONS
1928.....	47,085	24,981	72,066
1929.....	58,417	13,661	72,078
1930.....	48,438	21,902	70,340
1931.....	31,744	13,194	44,938
1932.....	19,521	14,470	33,991
1933.....	20,508	8,306	28,814
1934.....	23,213	9,550	32,763
1935.....	23,425	7,604	31,029
1936.....	41,223	6,634	47,857
1937.....	8,870	3,819	12,689
1938.....	20,723	4,397	25,120
1939.....	25,604	6,204	31,808
1940.....	—	4,687	4,687
1941.....	—	—	—
1942.....	—	—	—
1943.....	—	—	—
1944.....	—	—	—
1945.....	—	—	—
1946.....	—	1,056	1,056
1947.....	—	48	48

Source: Harbour Commissioners of New Westminster and Vancouver

11061

APPENDIX A

Schedule 3

WATER-BORNE SHIPMENTS FROM EASTERN CANADA AT THE PORTS OF VANCOUVER

AND NEW WESTMINSTER 1928 - 1947

<u>Year</u>	<u>Port of</u> <u>Vancouver</u> TONS	<u>Port of New</u> <u>Westminster</u> TONS	<u>Total</u> TONS
1928.....	30,545	60	30,615
1929.....	53,729	671	54,400
1930.....	30,069	3,703	33,772
1931.....	27,681	673	28,354
1932.....	18,683	1,153	19,836
1933.....	24,780	2,667	27,447
1934.....	55,484	5,908	61,392
1935.....	45,271	5,581	50,852
1936.....	62,009	2,932	64,941
1937.....	57,015	5,365	62,380
1938.....	50,889	8,510	59,399
1939.....	32,718	2,492	35,210
1940.....	5,525	-	5,525
1941.....	-	-	-
1942.....	3,711	-	3,711
1943.....	-	-	-
1944.....	1,659	-	1,659
1945.....	-	-	-
1946.....	-	-	-
1947.....	-	-	-

SOURCE: Harbour Commissioners of New Westminster and Vancouver.

APPENDIX A

Schedule 4

WATER-BORNE SHIPMENTS TO EASTERN CANADA FROM THE PORTS OF VANCOUVER AND NEW WESTMINSTER, 1928 - 1947, INCLUSIVE. (in tons)

Commodity	1928	1929	1930	1931	1932	1933	1934	1935
Lumber	63,722	64,583	55,601	40,448	22,989	14,335	22,534	12,079
Salmon, canned	4,164	4,530	3,907	1,953	7,164	8,868	6,005	4,231
Rice	1,346	899	691	450	606	660	1,732	1,238
Lumber, shingles	401	360	251	74	624	706	468	1,171
Canned goods, N.O.S.	663	164	293	376	433	468	608	679
Glassware	21	-	15	2	54	14	20	270
Paper manufactures	233	132	128	81	13	72	134	215
Fruit, dried	-	1	3	-	45	130	71	126
Hardware	6	10	9	25	30	97	34	96
Earthenware	-	-	-	-	-	-	22	80
Lumber, box-shooks	-	-	-	-	-	-	-	58
Beans and peas	125	75	-	15	173	201	154	55
Canned fish, N.O.S.	13	-	4	-	-	-	1	38
Metal, scrap	-	-	-	-	-	-	-	31
Oil, vegetable	-	-	-	-	-	-	-	26
Cans, empty	-	-	-	-	-	-	-	18
Liquors	-	749	1,324	-	305	943	38	14
Hops	9	4	8	2	8	3	6	14
Machinery	20	16	30	2	73	66	29	13
Paper, Kraft	-	-	-	-	-	-	-	11
Lumber, broom handles	-	-	-	-	-	-	-	10
Iron, pipe	-	-	-	-	-	-	-	8
Seeds	-	-	-	-	-	-	-	7
Groceries	111	7	-	3	92	7	3	4
Drugs & Sundries	1	14	3	-	-	-	5	4
Paints & Supplies	-	7	176	3	8	9	15	4
Casings	-	-	-	-	1	-	3	4
Fish-oil	-	-	-	42	-	2	234	3
Canned Pilchards	30	20	52	1	48	4	41	3
Electrical Goods	1	-	1	-	-	-	-	-
Not classified	153	146	7,773	1,414	1,204	385	228	409

(Schedule 4)

Commodity	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947
Lumber	23,247	4,990	13,671	16,883								
Rice	1,055	325	418	-								
Shingles	636	148	126	575								
Canned Goods, N.O.S.	991	262	440	467								
Glassware	1,777	47	-	52								
Paper Manufactures	188	-	4	-								
Fruit, dried	282	83	230	295								
Hardware	5	5	12	28								
Earthenware	2	3	-	-								
Beans & Peas	81	16	58	32								
Canned Fish, N.O.S.	155	-	-	-								
Metal, scrap	4	21	-	-								
Liquors	300	7	-	62								
Hops	6	-	5	3								
Machinery	39	4	145	23								
Iron, pipe	-	-	-	-								
Groceries	21	42	8	4								
Drugs & Sundries	16	10	6	4								
Paints & Pigments	11	11	10	-								
Casings - sausage	-	-	-	3								
Canned pilchards	152	32	-	3								
Electrical Goods	2	-	1	-								
Autos & Parts	5	5	-	3								
Casara Bark	5	-	-	3								
Cigarettes & Tobacco	-	-	-	-								
Chemicals & Acids	13	-	17	3								
Coffee	-	41	1	3								
Dry Goods	11	2	1	-								
Fish - canned salmon	8,043	2,472	4,968	5,394								
Footwear	17	-	-	-								
Fruit - canned pineapple	31	-	19	37								
Iron & Steel	1	-	2	-								
Lead & Lead Manufactures	55	-	-	-								

(Schedule 4.)

Commodity	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947
Handles	25	6	51	30								
Box Shooks	48	-	-	-								
Plywood	68	-	330	321								
Oil, lubricating	-	-	1	5								
Molasses & syrup	30	-	-	-								
Pulp	2,074	-	-	1,200								
Porcelainware	168	6	-	-								
Rope & Twine	-	-	1	-								
Tea	488	65	9	5								
Toys	581	149	-	-								
Cash Registers	-	2	-	-								
Class - Bottles	-	14	-	10								
Household Effects	-	1	1	-								
Nuts & Nutmeats	-	1	1	-								
Cocoa	-	-	-	-								
Furniture	-	-	2	-								
Glue	-	-	1	-								
Doors	-	-	8	-								
Milk, canned	-	-	-	2								
Wool	-	-	1	12								
Pepper	-	-	8	-								
Sewing Machines	-	-	2	-								
Tiles	-	-	8	-								
Wire	-	-	41	1								
Auto Tires & Casings	-	-	-	3								
Cigarettes & Tobacco	-	-	-	-								
Confectionery	-	-	-	1								
Fruit Juice	-	-	-	1								
Fruit, preserved	-	-	-	5								
Logs	-	-	-	6								
Oil, linseed	-	-	-	1								
Onions	-	-	-	-								
Soap	-	-	-	5								
Tallow, Inedible	-	-	-	33								
Not otherwise specified	576	93	105	73								

Source: Harbour Commissioners of New Westminster and Vancouver.

APPENDIX A

Schedule 5

WATER-BORNE SHIPMENTS RECEIVED FROM EASTERN CANADA AT THE PORTS OF VANCOUVER AND NEW WESTMINSTER, 1928 - 1947 (in tons)

Commodity	1928	1929	1930	1931	1932	1933	1934	1935
Iron rails	69	-	-	-	-	-	4,353	7,654
Oil, creosote	-	-	5,307	-	-	-	6,582	7,427
Hardware	5	6	5	-	-	-	1,581	7,095
Canned Goods	1,954	2,584	840	1,616	3,893	3,841	4,408	4,691
Wire rods	118	-	279	-	1,858	1,899	5,309	4,322
Iron & steel	2,394	23,366	4,206	4,934	1,356	2,522	4,785	3,023
Salt	645	48	-	-	54	1,278	6,997	1,816
Chemicals & acids	797	185	165	-	-	-	698	1,120
Wire	298	537	275	734	257	500	1,814	1,028
Bottles	488	477	131	161	229	636	1,235	780
Iron Pipe	3,176	2,608	395	2,363	70	638	1,043	780
Paper manufactures	2,021	1,807	840	1,676	635	533	1,114	778
Iron, pig	-	-	-	-	-	-	1,086	618
Paints & supplies	1,151	1,398	413	794	472	473	990	606
Nails & staples	2,554	3,817	38	1,515	1,349	1,020	1,349	499
Dry goods	442	568	243	-	199	473	628	452
Furniture	494	596	212	-	-	333	506	408
Machinery	165	342	132	132	87	225	268	408
Soaps & cleansers	786	506	596	643	634	663	1,034	399
Groceries	401	105	194	439	462	199	412	384
Starch & glucose	873	1,131	701	1,363	1,163	606	1,003	361
Drugs & sundries	615	389	297	-	-	-	293	329
Vinegar	77	101	178	-	-	-	316	265
Honey	252	176	124	167	71	307	193	236
Oil, lubricating	213	244	41	213	161	208	96	230
Fish, canned	289	126	233	207	168	211	269	206
Milk, powdered	-	740	609	595	444	713	1,135	208
Carbide	84	87	-	1	178	46	143	195
Liquors	74	-	-	-	-	32	51	137
wax, paraffin	-	-	-	-	-	99	81	133
Autos and parts	194	83	175	18	111	81	124	124
Lard & shortening	402	165	131	171	81	52	167	105
Wallboard	-	139	105	72	-	84	70	104
Asphalt products	119	225	255	10	10	542	125	97
Beans & peas	61	64	34	-	359	185	317	97

(Schedule 5)

Commodity	1928	1929	1930	1931	1932	1933	1934	1935
Wire, barbed	-	-	-	-	-	-	632	95
Carpets & linoleum	-	-	1	2	3	110	156	78
Electrical goods	108	191	98	-	-	-	83	78
Wire fencing	942	1,655	731	60	145	322	55	74
Glue	43	18	8	-	-	274	78	68
Petroleum wax	-	-	-	-	-	-	-	48
Asbestos & products	165	248	665	511	3	95	231	43
Fruit, dried	77	70	18	8	-	-	16	42
Rope & twine	62	43	37	68	77	21	79	36
Oil, vegetable	-	5	-	-	-	-	6	32
Earthenware	-	-	-	-	-	-	92	27
Pireclay	-	-	-	-	295	-	61	23
Coffee	-	139	-	6	23	10	77	23
Leather & Manufacturings	218	49	-	-	12	46	22	20
Paper, printing	36	-	26	53	51	96	48	20
Twine, binder	-	-	-	-	-	39	-	20
Sewing-machines	125	85	-	-	-	-	47	19
Toys	11	18	4	-	39	34	33	18
Gunnies	-	-	-	20	-	71	30	14
Ales & beers	-	-	-	-	-	-	-	13
Gelatine	-	-	-	-	-	-	-	11
Confectionery	-	31	7	81	3	18	31	11
Glassware & china	60	78	41	126	244	212	31	10
Musical instruments	205	81	26	-	-	2	12	8
Cigarettes & tobaccos	1	58	201	846	13	7	18	7
Bicycles & parts	7	7	3	3	1	4	14	5
Cement	23	39	4	3	-	71	30	5
Cocoa	103	81	18	69	132	146	46	4
Hops	23	26	7	10	18	15	7	3
Paper, wrapping	215	136	119	11	9	97	67	2
Fish, cured	-	-	-	-	-	-	-	2
Glass, window plate	-	-	-	-	-	-	-	1
Footwear	15	14	26	53	51	96	22	1
Lead pipes	-	-	-	-	-	-	-	1
Auto tires & casings	-	-	-	-	-	-	12	-
Wool	-	-	-	-	-	-	-	-
Not classified	6,121	7,272	13,163	8,058	3,938	6,051	8,179	3,340

(Schedule 5)

Commodity	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947
Iron rails	7,226	9,458	9,599	6,767	-	-	-	-	-	-	-	-
Oil, Creosote	6,537	15	5,519	7,798	5,525	-	3,567	-	-	-	-	-
Hardware	3,169	4,023	1,815	1,569	-	-	-	-	-	-	-	-
Canned Goods	3,693	4,606	2,789	1,598	-	-	-	-	-	-	-	-
Wire rods	3,791	3,513	4,297	2,577	-	-	-	-	-	-	-	-
Iron & Steel	8,521	7,512	3,603	1,658	-	-	-	-	-	-	-	-
Salt	2,359	4,415	2,355	1,708	-	-	-	-	-	-	-	-
Chemicals & Acids	978	1,123	1,702	1,152	-	-	-	-	-	-	-	-
Wire	2,522	1,960	1,053	1,036	-	-	-	-	-	-	-	-
Iron Pipe	2,537	1,105	1,905	307	-	-	-	-	-	-	-	-
Paper Manufactures	1,275	1,523	824	500	-	-	-	-	-	-	-	-
Iron, Pig	2,923	459	1,009	482	-	-	-	-	-	-	-	-
Paint & Pigments	596	864	527	342	-	-	-	-	-	-	-	-
Dry Goods	414	686	323	278	-	-	-	-	-	-	-	-
Furniture	561	609	449	299	-	-	-	-	-	-	-	-
Machinery	358	362	921	48	-	-	-	-	-	-	-	-
Soap & cleansers	480	802	374	127	-	-	-	-	-	-	-	-
Groceries	763	991	392	246	-	-	-	-	-	-	-	-
Starch & Glucose	432	545	353	92	-	-	-	-	-	-	-	-
Drugs & Sundries	556	359	499	284	-	-	-	-	-	-	-	-
Vinegar	-	-	-	-	-	-	-	-	-	-	-	-
Honey	289	380	178	150	-	-	-	-	-	-	-	-
Oil, lubricating	335	396	386	425	-	-	-	-	-	-	-	-
Fish, canned	122	-	-	-	-	-	-	-	-	-	-	-
Liquor	263	253	677	312	-	-	-	-	-	-	-	-
Wax, paraffin	148	66	86	-	-	-	-	-	-	-	-	-
Autos & parts	1,175	503	715	239	-	-	-	-	-	-	-	-
Lard & shortening	301	236	45	38	-	-	-	-	-	-	-	-
Wallboard	244	255	292	136	-	-	-	-	-	-	-	-
Asphalt	18	19	18	-	-	-	-	-	-	-	-	-
Beans & peas	80	12	496	131	-	-	-	-	-	-	-	-
Wire, barbed	83	568	486	80	-	-	-	-	-	-	-	-
Carpets & linoleum	323	297	139	87	-	-	-	-	-	-	-	-
Electrical goods	14	82	60	36	-	-	-	-	-	-	-	-
Wire - fencing	226	338	209	43	-	-	-	-	-	-	-	-

1,659

(Schedule 5)

Commodity	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947
Glue	134	159	137	85								
Asbestos Manufacture	-	397	16	32								
Fruit, dried	1	19	1	-								
Rope & twine	56	80	75	63								
Oils, vegetable	-	51	84	24								
Earthenware & china	28	125	182	77								
Fireclay	37	55	31	-								
Coffee	12	134	55	73								
Leather & Manufacturings	7	7	2	19								
Paper, printing	8	24	-	22								
Sewing-machines	80	43	50	22								
Toys	53	66	60	35								
Gunnies	138	154	25	-								
Gelatine	3	2	7	4								
Confectionery	12	110	107	82								
Glassware	1,032	1,309	812	424								
Musical Instruments	21	12	11	14								
Cigarettes & tobacco	1	8	-	-								
Cement	33	-	38	21								
Cocoa	37	5	9	-								
Hops	5	1	-	-								
Paper, wrapping	2	42	31	-								
Fish, cured	35	-	5	-								
Footwear	22	18	-	-								
Lead Pipes	1	12	10	7								
Auto tires & Castings	1	1	1	-								
Asbestos Fibre	382	212	101	55								
Asphalt Manufacture	215	482	-	-								
Cheese	39	62	60	15								
Clocks	1	-	-	2								
Cocoanut, dessicated	29	63	34	49								
Dry Goods	414	686	323	278								
Earthenware	-	82	56	18								
Flour	-	5	-	-								

(Schedule 5)

Commodity	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947
Hardware - nails & staples	499	851	1,089	79								
Liquor - beer	31	139	67	32								
Lumber, plywood	11	-	-	-								
Lumber, veneer	17	-	-	-								
Milk, canned	-	-	-	74								
Molasses & Syrup	142	156	138	86								
Nuts & nutmeats	2	-	1	-								
Oil, nut	-	-	-	-								
Oil, linseed	-	4	85	3								
Seeds	1	9	-	-								
Tea	5	24	37	14								
Tiles	45	27	40	14								
Washing Machines	239	84	82	76								
Wire - rope	5	1	13	-								
Zinc sheets	-	-	1	-								
Agricultural implements	-	525	341	120								
Biscuits	-	27	40	22								
Cans, empty	-	45	49	13								
Cotton	-	20	-	-								
Fibreboard	-	229	669	-								
Grain products, N.O.S.	-	15	12	4								
Granite	-	2	9	-								
Household Effects	-	344	234	7								
Meat, canned	-	10	-	-								
Nickel	-	5	-	-								
Sand	-	2	16	-								
Tapioca	-	2	-	-								
Typewriters	-	3	-	-								
Fish - oil	-	-	-	-								
Rubber, crude	-	-	14	-								
Refrigerators	-	-	11	24								
Rice	-	-	16	-								
Fruit - juice	-	-	-	-								
Not otherwise specified	4,250	2,385	1,801	460								

Source: Harbour Commissioners of New Westminster and Vancouver.

APPENDIX B

Schedule 1

Changes in Transcontinental Competitive Rates April 6, 1942 - August 4, 1948.

Effective Date	Supple- ment No.	Item No.	Commodity	Destination	Origin	Old Rate	Minimum Weight	New Rate	Minimum Weight (lbs.)
April 6, 1942	6	1028x	Fruit Juices, Canned Fruit & Vegetables	Vancouver	Annapolis Valley Stations	271	24,000	119	60,000
			Fruit Juices, Canned Fruit & Vegetables	Vancouver	Annapolis Valley Stations	271	24,000	171	40,000
			Evaporated Apples	Vancouver	Annapolis Valley Stations	271	24,000	125	60,000
			Evaporated Apples	Vancouver	Annapolis Valley Stations	271	24,000	174	40,000
			Apple Pomace	Vancouver	Annapolis Valley Stations	271	24,000	120	50,000
			Apple Pomace	Vancouver	Annapolis Valley Stations	271	24,000	168	40,000
		3515 4092	Boiler Heads Oil, Dinitrotoluol	Vancouver James Island	Montreal Valleyfield	242 242	36,000 30,000	165 178	60,000 30,000
April 16, 1942	7	4091	Creosote Oil	New Westminster North Vancouver	S.St.Marie	242	Rule 7	100	Tank cars Rule 7
June 8, 1942	10	3855	Castings, Forgings, N.O.S.	Rate Basis 4	Sydney, Nova Scotia	253	30,000	161	30,000
July 2, 1942	11	998x 3628x	Flooring Aggregate Raw Cotton	Rate Basis 4 Rate Basis 4	A.B. St. John, New Brunswick	148 248	40,000 24,000	120 181	70,000 30,000
			Raw Cotton	Rate Basis 4	A. B.	242	24,000	170	30,000

APPENDIX B

Schedule 1 (continued)

Effective Date	Supple- ment No.	Item No.	Commodity	Destination	Origin	Old Rate	Minimum Weight	New Rate	Minimum Weight (lbs.)
July 30, 1942	13	3528x	Portland Cement	Rate Basis 4	Paris, Ontario	148	40,000	75	60,000
		3720A	Fish, dried, smoked, pickled	(cancelled) (Sapperton,	Maritime	186-		237-	36,000
			Fish, dried, smoked, pickled	(by Supp.2) (British	points	192		244	
			Fish, dried, smoked, pickled	(Aug.18/43) (Columbia.					
			Fish, dried, smoked, pickled	(Old rates) (Vancouver	Maritime			Proportional Rates	
			Fish, dried, smoked, pickled	(restored.) (Seattle	points			Proportional Rates	
			Fish, dried, smoked, pickled	(Tacoma				Proportional Rates	
September 8, 1942	15	1685	Molasses in Tank Cars	Rate Basis 4	Montreal	242	24,000	100	50,000
		2211	Screen plates and segments	Rate Basis 4	A.B.	358	L.C.L.	350	L.C.L.
November 18, 1942	17	4185	Sisal Fibre	Rate Basis 4	A.B.	242	24,000	130	40,000
		4205	Corn Starch	James Island	Cardinal	250	24,000	128	50,000
December 9, 1942	18	85x	Asbestos fibre	Rate Basis 4	(Black Lake (Collaine (Danville (Thetford Mines (Warwick	160	30,000	125	70,000
			Refuse or shorts	Rate Basis 4	Warwick	160	30,000	100	70,000
			Waste	Rate Basis 4	Warwick	160	30,000	130	60,000

APPENDIX B

Schedule 1 (continued)

Effective Date	Supple- ment No.	Item No.	Commodity	Destination	Origin	Old Minimum Rate Weight	New Minimum Rate Weight (lbs.)
Dec. 9, 1942 (continued)		4162x	Salt	Rate Basis 4	(Courtright (Coderich (Kincardine (Sarnia (Sandwich	148 36,000	75 70,000
Feb. 8, 1943	19	2995	Wool in Grease	Rate Basis 4	A.B.	242 20,000	154 24,000
Feb. 15, 1943	20	3755x	Glass Globes or Shades	Rate Basis 4	(Hamilton (Montreal (Wallaceberg	358 16,000	242 (Included in Glassware Cartons) 30,000 if not more than 10% of total wt. of shipment.
Feb. 23, 1943	23	4162A	Salt	Rate Basis 4	Malagash	153 36,000	81½ 70,000
July 10, 1943	25	3905x	Lignin Powder	Vancouver	Shawinigan Falls	172 36,000	156 40,000
			Lignin Powder	Vancouver	Shawinigan	172 36,000	134 60,000
July 10, 1943	25	3932x	Mahogany Lumber	Vancouver	Toronto	220 36,000	123 60,000
		4255x	Veneer	Vancouver	St. John	172 36,000	118 40,000

APPENDIX B

Schedule 1 (continued)

Effective Date	Supple- ment No.	Item No.	Commodity	Destination	Origin	Old Rate	Minimum Weight	New Rate	Minimum Weight (lbs.)
Aug. 18, 1943	26	1600A	Wine (added to liquors)	Rate Basis 4	A.B.	242	24,000	235	30,000
Nov. 1, 1943	28	3932	Mahogany Lumber	(New Westminster) (Prince Rupert) (Victoria)	Toronto	220	36,000	123	60,000
Feb. 9, 1944	30	395	Cans, Metal, Fibreboard, etc.	Rate Basis 4	A.B.	242	20,000	242	20,000
Oct. 2, 1944	37	155	Baskets (Banana and meat) Firkins, kits, pails, tubs }	Rate Basis 4	A.B.	358	10,000	185	20,000
		735	Dry Goods - rayon yard and piece goods	Rate Basis 1	A.B.	552	L.C.L.	400	L.C.L.
				Rate Basis 1	C-F and S	564	L.C.L.	415	L.C.L.
				Rate Basis 1	T	564	L.C.L.	413	L.C.L.
Dec. 5, 1944	38	998A	Flooring aggregate	Rate Basis 4	A.B.	120	70,000	95	70,000
		4013x	Molasses	(New Westminster) (Vancouver) (Victoria)	St. Hillaire	242	24,000	106	50,000

APPENDIX B

Schedule 1 (continued)

Effective Date	Supple- ment No.	Item No.	Commodity	Destination	Origin	Old Minimum Rate Weight	New Minimum Rate Weight (lbs.)
Dec. 5, 1944 (continued)		3510A	Asphalt Emulsion	Rate Basis 4	Montreal (Equal with Brantford)	167 36,000	100 50,000
		4204	Starch	Rate Basis 4	London	242 24,000	120 50,000
Dec. 22, 1944	39	3500x	Aluminum Ingots, Pig and Slab	(New Westminster Vancouver Victoria)	Arvida	296 30,000	200 30,000
		4035x	Napthalene Refuse, Crude	Vancouver	S.St.Marie		100 Tank Cars
		3624x	Copper Sulphate	Vancouver	Montreal	242 36,000	105 50,000
		4095x	Ore, Bog iron, crude and ground	(Vancouver Victoria)	Red Mill, Quebec	152 50,000	131 60,000
May 22, 1945	41	3588x	Christmas Crackers	(Vancouver Victoria)	Toronto Strathroy	828 L.C.L.	650 L.C.L.
July 25, 1945	42	3490x	Alumina, Sulphate of	(Vancouver Victoria New Westminster)	Arvida	254 40,000	176 40,000
		3561x	Aluminum Cable	Pemberton Shalath Squamish	Shawinigan Falls Shawinigan Falls Shawinigan Falls	Class Rate 230 50,000 203 50,000	219 50,000

APPENDIX B

Schedule 1 (continued)

Effective Date	Supple- ment No.	Item No.	Commodity	Destination	Origin	Old Rate	Minimum Weight	New Rate	Minimum Weight (lbs.)
Nov. 5, 1945	44	3626x	Pop Corn	Vancouver	(Appin (Komoka, Ontario Strathroy A.B.	242	30,000	171	40,000
		4093x	Pop Corn	Vancouver		242	30,000	129	60,000
			Fish or Sea Animal oil - inedible	Rate Basis 4		242	30,000	75	40,000
Jan. 7, 1946	45	3820A	Eel Grass (insulating material)	Rate Basis 4	Lockeport, Nova Scotia	301	20,000	195	24,000
		4091B	Creosote Oil	(Fraser Mills (New Westminster (North Vancouver	Toronto	242	Tank Cars	134½	Tank Cars
			Creosote Oil	North Vancouver	Montreal	242	Tank Cars	137½	Tank Cars
April 1, 1946	46	595	Popped Corn	Rate Basis 4	A.B.	Double L.C.L. First Class	10,000	475	10,000
		90A	Automobiles, Passenger, Freight, Tractor }	Rate Basis 1	A.B.	528	10,000	482	10,000
				Chilliwack	A.B.	535	10,000	482	10,000
				Deerholme Duncan	A.B. A.B.	536	10,000	482	10,000
				Port Alberni	A.B.	548	10,000	495	10,000
		1235	Synthetic Gum, Resins	Rate Basis 1	A.B.	574	L.C.L.	358	L.C.L.

APPENDIX B

Schedule 1 (continued)

Effective Date	Supple- ment No.	Item No.	Commodity	Destination	Origin	Old Rate	Minimum Weight	New Rate	Minimum Weight (lbs.)
April 1, 1946		245	Boats (Excluding pleasure boats)	Rate Basis 1	(A to F) (H J K) (S T U V W)	2nd class	10,000	6th Class	(25,000 and under) 4th Class 25,000 to 50,000
July 16, 1946	14	65	Wallboard, Asbestos, Cement	A.B.	Vancouver	242		160	60,000
Aug. 5, 1946	48	3738	Frit enamel, clay ground	Vancouver	Ottawa	242	36,000	172	60,000
Oct. 26, 1946	49	108	Agricultural Implements	Rate Basis 4	A.B.	185	36,000	212½	24,000
Nov. 25, 1946	21	685	Iron & Steel, Angles, bars, plates	A.B.	Vancouver	220		110	100,000
Dec. 24, 1946	50	4091D	Creosote Oil	(Fraser Mills (New Westminster (North Vancouver (Vancouver	Sydney	250	Tank Cars	154	Tank Cars
April 10, 1947	53	3490B	Alumina, Sulphate of	(New Westminster (Vancouver (Victoria Victoria	Arvida	176	40,000	150	50,000
			Alumina, Sulphate of		Valleyfield	167	40,000	138	50,000

APPENDIX B

Schedule 1 (continued)

Effective Date	Supple- ment No.	Item No.	Commodity	Destination	Origin	Old Rate	Minimum Weight	New Rate	Minimum Weight (lbs.)
May 22, 1947	54	3705	Fertilizers	New Westminster	Toronto	242	30,000	95½	80,000
May 26, 1947	34	1115	Tea, in boxes	A.B.	Vancouver	552	L.C.L.	400	L.C.L.
June 5, 1947	55	3623	Paper Winding Cones	New Westminster	T. & R.	248	24,000	156	40,000
July 14, 1947	56	1322	Oil Burning Heaters	Rate Basis 4	A.B.T.	5th Class	24,000	4th Class	16,000 18,000
July 16, 1947	40	1212	Wallboard, Asbestos, Cement	A.B.	Vancouver	160	60,000	125	60,000
Aug. 13, 1947	43	785	Medicines	A.B.	Vancouver	552	L.C.L.	400	L.C.L.
Sept. 1, 1947	44	887	Cast Iron Pipe 3 to 6" Diameter	A.B.	Vancouver	242	36,000	95	70,000
Apr. 19, 1948	60	1213	Wallboard, Fibre	A.B.	New Westminster	293	30,000	121	60,000
Apr. 30, 1948	61	795	Cocoanut Oil	Elmira, Ont.	Vancouver	293	In Tank Cars	96	In Tank Cars
June 24, 1948	64	783	Matches	A.B.	Victoria	293	24,000	242	24,000
Aug. 4, 1948	66	1212C	Wallboard, Asbestos, Cement	A.B.	Vancouver	293	30,000	121	70,000

(x New Items)

Rate Groups: A -- Toronto area; B - Montreal area; C-G - Quebec stations not included in Group B.

Rate Basis: 1 - Vancouver area; 4 - Barnet, Coquitlam, Ioco, McKay, Marpole, New Westminster, North Vancouver, Port Mann, Port Moody, Vancouver and Victoria.

Comparison of the Transcontinental All Rail Class Rate
with the Effective Competitive Rate on Various Commodities
- Showing Percentage Relationship 1918 - 1948
(REVISED)

APPENDIX B
Schedule 2

Commodity	Aug. 1	Aug. + 15	June 30	Sept. 13	Sept. 17	Jan. 1	July 20	Nov. 30	Dec. 1	Jan. 20	Apr. 20	Aug. 1	Sept. 26	Nov. 7	Dec. 1	June 29	Jan. 15	Feb. 8
Acids	205.5	239.5		292	326	314			290.5	281.5								
N.O.I.B.N. Comp.	219								270									
Liquid	106.6	91.4		121.9	89.6	93			93	95.9								
Ammonia	205.5	239.5							290.5	281.5								
Aqua	219			292				208.5	193									
	106.6	91.4		121.9	89.6	93		64.0	66.4	68.6								
Dyestuffs	405	470.5		292	640.5	617			570.5	552.5								
N.O.I.B.N. Comp.	219								270									
	54.1	46.5		62.1	45.6	47.3			47.3	48.9								
Paper	176	204.5		278	268				248	242								
Comp.	187.5			175.5					162					150				
	131.5			85.8	63.1	65.5			65.3	66.9				62.0				
Axes	176	204.5		278	268				248	242								
Comp.	187.5			250					231.5									
	106.5	91.7		122.2	89.9	93.3			93.3	95.7								
Builders	205.5	239.5		166.5	326	314			290.5	281.5					150			
Hardware	125			69.5	51.1	53			153						53.3			
N.O.I.B.N. Comp.	60.8	52.2		166.5	278	268			52.7	54.4								
Barbed	176	204.5		166.5	278				248	242								
Wire	125			81.4	59.9	62.1	105		105				75					
	71	61.1		81.4	59.9	62.1	39.2		42.3	43.4			31.0					
Structural	160.5	186.5		254	244.5				226	220								
Iron & Steel	131.5			175.5	175				162									
Comp.	81.9	70.5		94.1	69.1	71.6			71.7	73.6								
Fabricated	176	204.5		166.5	278	268			248	242								
Red or White	125			81.4	59.9	62.1			154									
Lead (for	71.0	61.1		166.5	278				62.1	63.6								
Paint Making)	176	204.5		166.5	278	268			248	242								
Canned	125			81.4	59.9	62.1			154									
Goods	71	61.1		166.5	278				62.1	63.6								
	176	204.5		81.4	59.9	62.1			62.1	63.6				150		126		
Vehicle Parts	176	204.5		278	268				248	242								
Self	176		204.5	272.5		268			108.1	252	248						183	
Propelling	100	86.1	100	133.3	98.0	100			108.1	101.6	100						75.6	
Dry Goods	205.5	239.5		192	326	314			290.5	281.5								
Cotton	144			80.2	58.9	61.1			177.5									
Piece	70.1	60.1		80.2	58.9	61.1			61.1	63.1								

APPENDIX C

Schedule 1

THE DETERMINATION OF REASONABLY COMPENSATORY RATES UNDER SECTION 4
OF THE INTERSTATE COMMERCE ACT

An essential condition of obtaining relief from the prohibitions of the long-and-short-haul clause is a showing by the railroad that the reduced through rates are "reasonably compensatory". This requirement is imposed by the statute.

As pointed out in the main part of this submission (pp. 81) the term "reasonably compensatory" was defined by the Interstate Commerce Commission in Transcontinental Cases of 1922, 74 I.C.C. 48. The Commission said that to be reasonably compensatory a rate "must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; and (4) not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the Act." (p. 71.) This definition has been frequently repeated by the Commission in subsequent fourth-section cases, and it has been consistently adhered to.

See Fourth Section Order No. 8900, 88 I.C.C. 765 (1924);

Class & Commodity Rates in the South, 191 I.C.C. 613 (1933);

Citrus Fruits from Florida to North Atlantic Ports, 211 I.C.C. 535 (1935);

Pig Iron from Martins Ferry, Ohio, to Wilder, Ky., 270 I.C.C. 783 (1948).

A careful study of this definition shows that the term "reasonably compensatory" involves two distinct concepts. First, is the rate compensatory in the absolute sense? That is, does it leave the carrier in a better position than would obtain if it did not charge a low

rate? Second, if the rate is compensatory, does it contribute as much to the earnings of the carrier as it should, or is it lower than it needs to be?

The first and last of the requirements of a reasonably compensatory rate relate to the first matter, namely, whether the rate is compensatory as a matter of fact. In order to be compensatory the rate must "cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies". Such a rate, although compensatory when considered by itself, is not compensatory in a broader sense if, when put into effect, it fails to increase the net revenue of the carrier because the additional revenues derived from the additional traffic are offset by reductions in revenue from traffic that would have moved at the normal rate anyway. This accounts for the last requirement of a reasonably compensatory rate as stated by the Commission, namely, that it must not jeopardize the appropriate return on the value of carrier property generally, such as might result from collateral losses of revenue.

From an economic standpoint a rate is compensatory if it meets the tests described above, but it is not "reasonably compensatory" in the eyes of the Commission unless it meets the other two requirements specified by the Commission in its definition, namely, that it is "no lower than necessary to meet competition", and is not so low "as to threaten the extinction of legitimate competition by water carriers." *

The Commission, when considering whether a rate is reasonably compensatory or not, does not make a distinction between the two different matters involved in the term "reasonably compensatory". Rates have been found not reasonably compensatory, however, not only when they

* It will be noted that the third requirement in the Commission's definition of "reasonably compensatory" is that the rate must not be so low as to threaten the extinction of legitimate competition "by water carriers". This may be because water competition was the form of competition encountered in that case, but the principle, if sound when water competition is encountered, is equally sound when competition with other modes of transportation is encountered.

were not in fact compensatory, but when they were compensatory, although lower than they needed to be.

We may now turn to a consideration of the measures of "reasonably compensatory" which are used by the Commission in fourth-section cases. Since, as we have seen, there are four elements in the Commission's definition of a reasonably compensatory rate, it is necessary to consider each separately.

1. A reasonably compensatory rate must cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies.

From an economic standpoint this is the basic and most important requirement of a reasonably compensatory rate. But it is not easy to be sure that a rate conforms to this requirement. Several standards have been applied by the Commission in satisfying itself that a proposed reduced rate conforms to this test. The most important of these are described below.

Special cost studies. In some fourth-section cases the carriers have attempted, by cost studies, to determine the extra or out-of-pocket-cost of added traffic. The cases listed below are examples of cases in which evidence of this sort was introduced.

Transcontinental Cases of 1922, 74 I.C.C. 48 (1922);

Crude Oil from Louisiana Points, 74 I.C.C. 48 (1922);

Commodity Rated to Pacific Coast Terminals, 107 I.C.C. 421 (1926);

Pacific Coast Fourth Section Applications, 165 I.C.C. 373 (1930);

Export and Import Rates, 169 I.C.C. 13 (1930);

Roofing and Building Material to Florida Ports, 204 I.C.C. 291 (1934);

Sugar from California to Chicago, 211 I.C.C. 239 (1935).

It should be recognized that cost analyses of this sort cannot be precisely accurate. The calculations involve certain assumptions, such as the proportion of different classes of expenses that would vary with the volume of traffic, and the proportion that would remain unaffected

by additional traffic. Such assumptions are difficult to verify. Calculations of out-of-pocket-costs are also dependent upon assumptions as to whether added traffic will require additional train-miles, or whether the traffic could be carried on existing trains. At best, calculations of added costs of added traffic are but an aid to the carriers and to the Commission in exercising their judgment as to how low rates may be profitably reduced to meet some competitive situation.

It should be recognized that cost studies of the sort mentioned cannot give an out-of-pocket-cost figure that is good for all traffic, and for all times and conditions. Out-of-pocket-cost differs on different kinds of traffic; it varies with the length of the haul even when reduced to a mileage basis; and it is dependent upon the extent to which unused capacity exists in various parts of the railroad plant. What constitutes a compensatory rate on one kind of traffic under one set of conditions is not a compensatory rate on another kind of traffic or under another set of conditions. The danger of generalization as to what constitutes a compensatory rate is therefore apparent.

Ton-mile, car-mile and per-car revenues. The difficulty, expense and delay involved in elaborate cost studies means that the great majority of fourth-section applications must be disposed of without the aid of such studies. In most fourth-section cases judgment as to the compensatory character of the proposed reduced rates is reached from a consideration of ton-mile, car-mile, and per-car revenues. Statistics of this nature appear to nearly all of the fourth-section reports.

Proposed rates may be found reasonably compensatory simply because they yield ton-mile, or car-mile earnings which compare favourably with similar earnings for comparable distances under rates prescribed or approved by the Commission for other similar commodities. See Cement to Miami, Fla., 216 I.C.C. 740 (1936); Blackstrap Molasses to Peoria and Pekin, Ill., 223 I.C.C. 221 (1937). Rates may also be found reasonably compensatory because the ton-mile earnings equal or exceed average ton-mile earnings on all traffic. Rice from Memphis,

Tenn., 209 I.C.C. 632 (1935).

Rates which yield less than 5 mills per ton-mile are quite apt to be considered less than reasonably compensatory. The Commission has said that it "quite generally has denied fourth section relief where the proposed rates yielded less than 5 mills per ton per mile." Grain between River Ports on Illinois Central System, 211 I.C.C. 379 (1935); Grain and Grain Products, 197 I.C.C. 441 (1933).

There are many cases, however, where fourth-section relief has been granted even though earnings under the reduced through rates would yield less than 5 mills per ton-mile. Usually these have been instances in which the commodities involved were heavy loading, and even at low ton-mile rates yielded satisfactory car-mile earnings. Thus in Coal from Kentucky, Tennessee, & Virginia, 211 I.C.C. 639 (1935), certain of the reduced through rates yielded 4.65 mills per ton-mile, but 23.2 cents per car-mile. In Corn to New Orleans, La., 204 I.C.C. 557 (1934), the Commission approved a rate which yielded only 4 mills per ton-mile, although it resulted in car-mile earnings of 15.9 cents. The following cases are instances in which fourth-section relief was granted when the proposed reduced rates yielded less than 5 mills per ton-mile but gave satisfactory earnings per car-mile.

Potash from New Mexico to Pacific Coast, 256 I.C.C. 11 (1943);

Dried Beans from the West to the Southwest, 259 I.C.C. 439 (1945);

Coal from Southwest Virginia to Memphis, Tenn., 264 I.C.C. 398 (1946);

Soda Ash to Georgetown, S.C., 269 I.C.C. 475 (1947);

Potash from Carlsbad & Loving, N. Mex., 269 I.C.C. 747 (1948).

As suggested above, revenues per car-mile as well as revenues per ton-mile may be of significance in determining reasonably compensatory rates. In numerous cases the Commission has denied fourth-section relief where the reduced through rates would yield less than 10 cents per car-mile.

Charcoal from Memphis, Tenn. 213 I.C.C. 751 (1936);

Binder Twine from New Orleans & Port Chalmette, La., 214 I.C.C.
126 (1936);

Binder Twine from Texas Ports & Lake Charles, La., 214 I.C.C.
681 (1936);

Sugar to Illinois Territory & Cincinnati, Ohio, 270 I.C.C.
699 (1948).

In some instances 12 cents per car-mile has been set as a limit.

Sirup & Molasses from the South and Southwest, 222 I.C.C.
199 (1937);

Citrus Fruits from Texas to North Atlantic Ports, 222 I.C.C.
390 (1937).

In a great number of cases the Commission has restricted fourth-section relief by imposing both a car-mile and a ton-mile revenue limitation. In most of such cases relief has been restricted so as not to apply where the resulting revenues would be less than 5 mills per ton-mile where the minimum carload weight is 40,000 pounds or more, or less than 10 cents per car-mile where the minimum carload weight was less than 40,000 pounds. For examples of these or closely similar restrictions see the following:

Export & Import Rates to and from Southern Ports, 205 I.C.C.
511 (1934);

Import Rates from Southern Ports to Minneapolis, Minn., 218 I.C.C.
284 (1936);

Exports & Imports Rates from Central Territory, 219 I.C.C.
644 (1936);

Export & Import Rates from and to Gulf Ports, 227 I.C.C. 61 (1938);

Export Rates on Fresh Meats & Packing House Products, 268 I.C.C.
183 (1947);

In some instances the limitation fixed has been 6 mills per ton-mile or 12 cents per car-mile, e.g. Export and Import Rates, 169 I.C.C. 13 (1930). It should be observed that the effect of imposing ton-mile and car-mile limitations in cases in which fourth-section relief is granted as to deny relief over extremely circuitous routes, since over such routes the reduced through rate will often result in ton-mile or car-mile earnings below the minimum permitted under the fourth-section order.

The conclusion to be drawn from the cases cited in the immediately preceding paragraphs is that rates are usually considered to be reasonably compensatory if they yield 5 or more mills per ton-mile, or ten or more cents per car-mile. On the other hand, rates which yield less than 5 mills per ton-mile or 10 cents per car-mile are likely to be considered less than reasonably compensatory.

Relation between Reduced Rate and Normal or Prescribed Rates. In some instances the reasonably compensatory character of the through rate is judged by its relation to the normal or prescribed rates for the through distance. Thus in Commodity Rates to and from Gulf Ports, 216 I.C.C. 405 (1936), the Commission said that rates ranging from 35 to 70 per cent of the prescribed maximum reasonable rates would not be reasonably compensatory. In numerous cases the Commission has restricted relief to routes over which the proposed reduced rates would not be less than 75 per cent of rates prescribed as maximum reasonable rates, or approved as not in excess of maximum reasonable rates in other proceedings, for the distances over such routes. The following are illustrative cases:

Rates from, to and between Points in Southern Territory, 191 I.C.C. 507 (1933);

Class & Commodity Rates in the South, 191 I.C.C. 613 (1933);

Iron and Steel Rates, 209 I.C.C. 657 (1935);

Iron & Steel in Central & Trunk Line Territories, 209 I.C.C. 699 (1935);

Western Trunk Line Fourth Section Class Rates, 238 I.C.C. 255 (1940);

Cement from Kansas & Oklahoma to Oklahoma, 248 I.C.C. 773 (1942).

The effect of rate limitations of this sort, like revenue per ton-mile or per car-mile limitations, is to deny relief to excessively circuitous routes.

It should not be inferred that the limitation is always 75 per cent of the normal or prescribed rate. Other percentages have been used, such as 60 per cent or 65 per cent of the normal rate for the through distance. See Export and Import Rates, 169 I.C.C. 13 (1930); Rates from, to, and between Points in Southern Territory, 191 I.C.C.

507 (1933). In Sugar from California to Chicago, 211 I.C.C. 239 (1935), the Commission said: ".....we have never laid down a definite percentage of a maximum reasonable rate as a test to be applied in all cases for determining reasonably compensatory rates for fourth-section purposes, nor can a definite rule be evolved from the decided cases." (pp. 252-253). The cases in which limitations of this nature have been imposed, however, would indicate that through rates less than 60 to 75 per cent of normal or prescribed rates for the through distance are likely to be considered by the Commission as so low as not to be reasonably compensatory.

The Circuity Test. The Commission frequently reasons that if a rate is reasonable over a direct route it would become less than reasonably compensatory over an extremely circuitous route. Thus in Memphis-Southwestern Investigation, 77 I.C.C. 473 (1923), the Commission said: "It may not necessarily follow that the rates of the short line between two points would not be reasonably compensatory if applied via a route more than twice as long between the same points. There would, however, be a strong presumption that if the rates for the shorter distance via the direct line or route are reasonable they would not be reasonably compensatory for a haul of more than twice that distance..." (p. 526)

The great majority of cases in which fourth-section relief is granted are cases in which circuitous routes seek authority to reduce through rates to meet the rates of direct routes without reducing rates at intermediate points. In cases of this type the Commission usually limits relief to routes that are not excessively circuitous. One object of such a restriction is to make sure that relief is not granted to routes over which the proposed through rate would be less than reasonably compensatory. The restriction is also designed to prevent wasteful transportation by discouraging efforts of extremely circuitous routes to compete for traffic that can be moved much more economically by more direct routes. Thus in Cement to New England Territory, 209 I.C.C. 682 (1935), the Commission said: "In authorizing relief to circuitous routes, we have generally imposed some form of limitation upon the maximum circuity

of those routes. The purpose of these limitations is to restrict the relief to routes over which the rates will be reasonably compensatory for the service performed and the use of which will not result in wasteful transportation." (p. 690) See also Export & Import Rates from and to Gulf Ports, 227 I.C.C. 61 (1938); and Coal from Illinois & Related Districts to Iowa, 268 I.C.C. 323 (1947), where the dual purpose of circuitry limitations is also asserted. Because of this dual purpose of the circuitry limitations one cannot conclude that a through rate over a route exceeding the circuitry limitation is necessarily less than a reasonably compensatory rate over that route. It may merely indicate that the Commission considers the use of the more circuitous route as excessively wasteful.

The maximum degree of circuitry permitted when fourth-section relief is granted to circuitous lines varies greatly, and commonly varies from 25 to 70 per cent of the distance by the direct route. The wide range in the maximum degrees of circuitry permitted arises from a policy of restricting more severely the permissible circuitry when the through distance by the direct route is great, and permitting a greater degree of circuitry when the through distance by the direct route is small. As an example of one of the more elaborate circuitry limitations which involves this policy, although typical of many others, the action of the Commission in Brick & Clay Products within and to the South, 225 I.C.C. 489 (1943), may be cited. In this case fourth-section relief was granted subject to the following circuitry limitation: "The relief granted herein shall not apply to circuitous lines or routes (1) where the distance over the short tariff line or route is 150 miles or less and the longer line or route is more than 70 per cent circuitous; (2) where the distance over the short tariff line or route exceeds 150 miles, but does not exceed 1,000 miles, and the longer line or route is more than 50 per cent circuitous, except that where the distance over the short tariff line or route exceeds 150 miles and the distance over the longer line or route does not exceed 255 miles, relief will apply to such longer line or route

even though it is more than 50 per cent circuitous; and (3) where the distance over the short tariff lines or route exceeds 1,000 miles and the distance over the longer line or route is more than $33 \frac{1}{3}$ per cent circuitous, except where the distance over the short tariff line or route exceeds 1,000 miles and the distance over the longer line or route does not exceed 1,500 miles, relief will apply to such longer line or route even though it is more than $33 \frac{1}{3}$ per cent circuitous." (pp. 494-495).

Circuitry limitations are principally of importance in cases in which fourth-section relief is sought by circuitous lines to meet the rates of direct lines or routes, but they may also be imposed when fourth-section relief is granted direct rail routes to meet other types of competition, such as competition by water carriers, motor carriers or pipe lines, or to meet market competition, in order to prevent excessively circuitous routes from participating in the movement of the competitive traffic. Circuitry limitations, as we have noted, are imposed partly on the theory that a rate which is reasonable, or at least compensatory, for a direct route, will be less than reasonably compensatory for the much longer haul over an extremely circuitous route.

2 & 3. To be reasonably compensatory a rate should be no lower than necessary to meet existing competition and should not be so low as to threaten the extinction of legitimate competition by water carriers.

These are the second and third essentials of a reasonably compensatory rate as defined by the Interstate Commerce Commission. Because of their close relationship to each other they may be considered together.

In Soya Bean Meal to Pacific Coast Ports, 225 I.C.C. 51 (1937), the Commission granted fourth-section relief but required that the through rate from Illinois points to the Pacific Coast be 60 cents instead of 57.5 cents which had been proposed by the carriers. The Commission considered that the 57.5-cent rate was lower than necessary to meet competition. This case is mentioned in the main body of this

statement (pp.102-103 supra.) Other recent cases in which the Commission has followed a similar policy or has denied relief because the proposed rates were lower than necessary to meet competition, or threatened the extinction of legitimate competition by water carriers, are as follows:

Confectionery to New Orleans, La., 229 I.C.C. 171 (1938);

Pulpboard from Southern Ports to Eastern Ports, 238 I.C.C. 67 (1940);

Zinc Oxide & Lithopone to Memphis, Tenn., 243 I.C.C. 195 (1940);

Sulphur to Munising, Mich., 245 I.C.C. 171 (1941);

Lumber from North Carolina to New York, 245 I.C.C. 231 (1941);

Mineral Water, Hot Springs to North Atlantic Ports, 245 I.C.C. 535 (1941);

Pig Iron from Martins Ferry, Ohio, to Wilder, Ky., 270 I.C.C. 783 (1948).

4. To be reasonably compensatory a rate must not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the Act:

This requirement of a reasonably compensatory rate has been mentioned as referring principally to the possibility that collateral losses of revenue may result from a proposed reduction in a through rate. This may happen when a considerable amount of through traffic moves under the existing rate. Under such circumstances the gain in revenue from additional traffic obtained under the reduced rate may be offset by the loss of revenue on traffic that would have moved at the higher rate. It may be observed that the requirement that the reduced rate should not jeopardize the appropriate return on the value of carrier property generally, embraces not only the effects on the applicant carrier, but the effect on other carriers that might be adversely affected.

As noted in the main portions of this statement the matter of collateral losses of revenue has figured prominently in a number of transcontinental fourth-section cases.

Transcontinental Cases of 1922, 74 I.C.C. 48 (1922). See pp. 80-84
supra.;

Commodity Rates to Pacific Coast Terminals, 107 I.C.C. 421 (1926),
See pp. 84-86 supra.;

Transcontinental Westbound Automobile Rates, 209 I.C.C. 549 (1935).
See pp. 90-91 supra.

The Commission's policy of not authorizing fourth-section relief when gains in revenue from added traffic would likely be offset by collateral losses of revenue is consistent with its policy in other cases, not involving Section 4, where the Commission has recognized its obligations under Section 15a of the Act and refused to permit reductions in rates where collateral losses of revenue would more than offset gains in revenue from the reduced rates.

See Trunk-Line and Ex-Lake Iron Ore Rates, 69 I.C.C. 589 (1922);
and All Freight Between Portland & Seattle, 238 I.C.C. 729 (1940).

(PAGE 11875 FOLLOWS)

MR. HU HARRIES - Recalled.

Examination by Mr. Frawley resumed:

Q. Mr. Harries, when we adjourned last night, you had reached page 8 of your brief, discussing the legislation which led up to the present section 314. Have you anything more to say on that, or can you now proceed to Section "B".

A. I think we had completed that.

Q. Section "B", at the top of page 10 commences with "Administrative History of the Long and Short Haul in Canada". I suppose you mean the history of the jurisprudence of the Board of Transport Commissioners in connection with the long and short haul?

A. That is what I mean.

Q. Will you proceed to say what you wish to say with respect to Part "B"?

THE CHAIRMAN: At what page?

MR. FRAWLEY: Page 10, sir.

THE WITNESS: I believe that before we adjourned last night I had said that taking the cases as a whole, dealing with the long and short haul discrimination, that it was our opinion that that indicated that the Board had had a negative attitude in this matter, and I was going on to point to several of the cases, parts of which we have quoted, to indicate why we would believe that to be the fact. The first case I wish to refer to is Regina Board of Trade v. Canadian Pacific Railway.

MR. FRAWLEY: Q. At what page is that found?

A. It is noted at page 14, and is 22 C.R.C., 315. It sets out here that the railway had applied the rate from Vancouver to Montreal, which was a competitive rate as to the maximum to intermediate points.

The result of applying that rate of maximum had been, as far as Regina was concerned; to give them the Montreal rate, so that you really had a blanket extending from Regina east to Montreal, in which the rate for moving canned goods was the same.

THE CHAIRMAN: Q. Pardon me. What kind of goods did you say?

A. Canned goods, was, I believe, the commodity. There were some increases in the American transcontinental rates, and the Canadian rates were increased, and Regina complained about having those rates increased. The Board in its decision made several comments, to which we draw attention. They said first:

"The rate is on a water-compelled basis, and Montreal is the maximum to the intermediate point, thus, spreading over the intermediate points not affected by water competition, the effects of the competitive rate basis."

They simply meant that Regina had Montreal rates as a maximum on this movement from Vancouver to Montreal.

Then they go on to point out that:

"The Panama Canal route by keener competition reduced the transcontinental rates, and the affect of this, although lessened in degree as the point effected was situated further north, was seen in the rates from North Pacific Terminals and Vancouver. "

They further add:

"The reductions in transcontinental rates from these points were spread back, controlling the maximum rates to intermediate points."

That is what the Board said in connection with this procedure of spreading back the transcontinental rate,

which procedure was adopted by the railways. That is the general situation. I believe it is fair to say with rates which go from West to East, most of those West to East rates - transcontinental competitive commodity rates - are applied as maxima to the intermediate points.

MR. FRAWLEY: Q. Let us be clear about that, because there is a distinction to be drawn.

A. Yes.

Q. Will you illustrate that? You say in most cases the West to East rates observe the long and short haul rule?

A. Yes.

Q. Now by way of illustration...?

A. Take a commodity --- I think tea is one such commodity, where you have a competitive movement from Vancouver to Montreal, there is no competition on the movement from Vancouver to Regina, but the rate which applies to Montreal is spread back, so that it acts as a maximum rate which the Regina people will pay.

COMMISSIONER INNIS: Q. What do you mean by ~~price~~ "maximum"?

A. If the competitive rate is \$1.00, the rate which the people pay at any intermediate point will never exceed \$1.00, although in the absence of that competitive rate the rate which ordinarily moves the traffic may be a standard toll, which may be \$1.25 or \$1.50.

THE CHAIRMAN: Q. You say the rate will never exceed \$1.00

A. Yes sir.

Q. Then what grievance arises out of that on the part of Regina?

A. Our contention was that they would have no grievance under those circumstances.

Q. They thought they had one, because they brought a case.

A. Yes sir; they thought they had a grievance, because they said in effect, you charge Montreal \$1.00 and you charge us \$1.00, and the difference is significant; we should have a rate of 50¢. That, roughly, was the argument.

Q. Then while you call it maximum, they were, as a matter of fact, being charged the full \$1.00?

A. Yes sir.

Q. The word "maximum" is a bit confusing. It is not as if there were something below that, at which they were being charged, but they were being charged the fullest possible rate. Is that it?

A. Yes sir.

Q. You say they have no grievance in connection with that?

A. That would be my opinion.

Q. Why?

A. Because they were receiving the benefit of the competitive rates at a non-competitive point.

Q. Competitive water rates?

A. Yes sir.

Q. They were receiving it in Regina on account of the competition that ended in Vancouver, is that what you mean?

A. On account of the competition between hauling goods from Vancouver to Montreal, yes sir. The reason the expression "maximum" applies is because if the rate on that particular movement --- the standard rate --- was 75¢ to Calgary from Vancouver, and \$1.25 to Regina and \$1.00 to Montreal, the rate would be cut back all along the line until such time as the standard rate was brought to \$1.00. The rate at Calgary for instance, might be the 75¢ rate; Medicine Hat might have the 90¢ rate; then when we get to Moose Jaw

the rate might/^{be}\$1.05. Regina would be cut back and Moose Jaw would be cut back all along the line.

MR. FRAWLEY: Q. Is it clear why the rate from Vancouver to Montreal is \$1.00?

A. That was because of the competition, either carrier competition or water competition.

THE CHAIRMAN: Q. Otherwise it might go around by boat?

A. Yes.

MR. FRAWLEY: Q. And otherwise the ordinary normal rate to Montreal might be, as you have given ---

A. \$2.00 or \$2.50.

Q. And having established the rate to Montreal at \$1.00, because of competition, they then apply that rate to Montreal as a maximum to all other intermediate points back to the origin?

A. Yes.

THE CHAIRMAN: Q. You say that was all right?

A. I say that is a very commendable procedure, yes.

MR. FRAWLEY: Q. Why?

A. Because it removes any long and short haul discrimination. In the absence of that \$1.00 rate as a maximum there would be a long and short haul discrimination at a host of points, as we will illustrate when we look at the movement from East to West.

Q. Will you illustrate that now? Suppose we did not observe the long and short haul rule; they have made a rate to Montreal of \$1.00, and they are not observing the rule, and applying that rate to intermediate points. By way of illustration, what might the rate be to Calgary, to Regina?

A. In the absence of applying that rate as \$1.00 as a maximum, you might have a rate to Regina of \$1.45, \$1.55 at Winnipeg, \$1.75 at Kenora and \$1.00 at Toronto.

Q. That illustrates it. That is the point I wanted to make clear.

A. There is another point ---

THE CHAIRMAN: Q. I suppose Regina simply looked at it this way: here are goods which go to Montreal for a \$1.00, why should we have to pay \$1.00 when they come only as far as Regina? Is that right?

A. Yes.

Q. That is, they disregarded the competitive condition which attached itself to all this?

A. Yes sir.

MR. FRAWLEY: You might say, my lord --- and this is something we have to discuss before we finish this brief.--- Regina was not satisfied with only removing the long and short haul rule, but she wanted something in the way of rates claimed for distance.

THE WITNESS: One other point I want to make is: We have been discussing this as simple Vancouver to Montreal competition. There is another factor which has an added influence on these West to East transcontinental rates, and that is the existence of American competition as at a point such as Winnipeg; I think that is a historical factor, to a great extent, but it has an appreciable effect on that structure.

THE CHAIRMAN: This is a case where because from Vancouver to Montreal/^{it} is a long haul, it is quite all right to charge as much for short hauls to intermediate points?

MR. FRAWLEY: It is all right, but no more.

THE CHAIRMAN: Just as much?

MR. FRAWLEY: Just as much, meaning that the long and short haul rule is being complied with.

THE CHAIRMAN: Being complied with, but only meaning that you would not be charged any more than you would

charge for^a/long haul, because there is a competitive motive for the cheaper long haul rule.

MR. FRAWLEY: But to bring it to a point, at the moment Calgary and Edmonton are being charged, say on canned goods from Toronto, \$2.59, while Vancouver is being charged on canned goods from Toronto \$1.40. We say that illustrates the situation in a nutshell, as it were.

THE CHAIRMAN: If you had the same rate to Edmonton and Calgary as they have to Vancouver, you say that would be satisfactory?

MR. FRAWLEY: Yes, we would say then the long and short haul rule is being violated ---

THE CHAIRMAN: That is the case when your basic condition of mileage is certainly departed from, is it not?

MR. FRAWLEY: Well, I suppose one could say that, yes sir.

Q. Will you continue, Mr. Harries?

A. Turning to another case which we have noted here --

Q. Page?

A. On page 15. the general freight rates investigation. We find there that Alberta was complaining about the fact that the transcontinental rate from East to West violated this long and short haul rule.

THE CHAIRMAN: Pardon me. Did you say the Vancouver rate from East to West?

A. Yes sir. Moving the other way now, we say the railways did not blanket back the transcontinental rate, or apply the transcontinental rate to intermediate points. So you had a situation, just as Mr. Frawley has indicated, where the rate on canned goods would be \$1.00 to Vancouver and \$2.00 to Calgary; the car goes right through Calgary on its way to Vancouver, and they get half as much when they get to Vancouver as when they leave the car at Calgary.

Q. You say the rate from Toronto to Vancouver should be made the maximum rate for all intermediate points?

A. Yes sir, in general.

Q. Has there been any case before the Board on that end of it?

MR. FRAWLEY: In the general freight rates investigation, which the witness is now discussing, the matter was brought up.

THE CHAIRMAN: Is that in 1925?

MR. FRAWLEY: That is the 1927 case, in 33 C.R.C., and there is an extract from the judgment of the Chief Commissioner at page 15.

THE WITNESS: There have been other cases later than that, some of which are mentioned in our summary. Just before we go, on I might point out that we are not asking that automatically the transcontinental rate should be applied as the maximum; that is, we are taking the more conservative view of it. We are saying that there should be certain things which the railways must prove before they are permitted this long and short haul violation, and those things which must be proved form part of our recommendation in this connection.

MR. FRAWLEY: It might be well to keep that in mind as we go through the brief. We are not asking for an automatic rate adjustment. We are not saying that the rate today of \$1.40 to Vancouver on canned goods, should be made to apply to Calgary. We want more complete administration; we want the railway to obtain approval of the Board first before it violates the long and short haul rule. That is roughly what we say.

THE CHAIRMAN: In that case there should be a hearing?

MR. FRAWLEY: Not necessarily a public hearing, but approval should be first obtained from the Board of Transport Commissioners. That is what we have been trying to put in the new section which we gave you yesterday.

THE CHAIRMAN: If approval were obtained, does that

mean the matter is final, or might there then be a hearing?

MR. FRAWLEY: I think, like every other rate, it could be reviewed and discussed. I do not want to get to the end of the brief at once, but these things might be helpful.

We say that at the moment it is a purely negative administration; if the railway wants to violate the long and short haul rule, the section now says it may be violated owing to competition. If the railway wants to violate the long and short haul rule, they then say there is competition.

MR. SINCLAIR: It is not quite like that. If Mr. Frawley is going to give evidence like that in the face of the statute, I think it is going a little far.

THE CHAIRMAN: Then, Mr. Sinclair, will you give us the evidence?

MR. FRAWLEY: You are invited.

MR. SINCLAIR: The statute says competition will justify a departure from the long and short haul rule, but that competition has to be there, and the rates set to meet that competition will have to be reasonable in the sense that they will have to be compensatory or they will not be allowed.

MR. FRAWLEY: Oh ---

MR. SINCLAIR: The Board had the right.

THE CHAIRMAN: If you would not all speak at once, gentlemen, it would help.

(Page 11888 follows)

MR. SINCLAIR: Mr. Frawley interprets the legislation one way and maybe I interpret it the other way, but I think the legislation is abundantly clear.

THE CHAIRMAN: This brings in all competitive rates, does it not? That is to say, would it leave any competitive rate which the railways could make effective without going to the Board?

MR. FRAWLEY: Yes, because it is a code in itself.

THE CHAIRMAN: We have heard elsewhere that all competitive rates had to be first approved by the Board. You only make that condition to the transcontinental competitive rates?

MR. FRAWLEY: Yes, or our attitude on other competitive rates was contained in the new section 313A that I gave you yesterday.

Q. All right, Mr. Harries.

THE CHAIRMAN: Let us get our bearings. Where are we now?

THE WITNESS: I was discussing the Freight Rates Investigation.

THE CHAIRMAN: And at that time you presented certain views?

A. Yes.

MR. FRAWLEY: Yes, that is what the witness was saying when I interrupted.

THE WITNESS: We are not arguing about these cases at all. We are simply using them as an illustration to prove this point that we make, that the Board has had a negative attitude in this matter, because as I have just indicated in the Regina case, the railways applied the competitive rate as maxima to the intermediate point.

THE CHAIRMAN: In the Regina Case, did not the Board uphold the railways' action?

A. Yes, and then in the General Freight Rates Investigation where the matter of transcontinental rates from east to west was being investigated, among other things, the Board said, as we have listed here in this excerpt from the judgment, that it is quite all right if the railways do not chose to blanket back the rate to the intermediate point, and we make no dissent from that. So, you have one situation where the railways have applied the maxima to the intermediate point, and you have another situation where they do not, and in both cases the Board says, "In our opinion, that is acceptable".

THE CHAIRMAN: You say it should be made compulsory in both cases?

THE WITNESS: Yes, we say that the Board should have these several things approved before they commit a violation of the long and short-haul rule.

THE CHAIRMAN: So, if a rate is given from Toronto to Vancouver, it should automatically become the maximum rate to Calgary?

THE WITNESS: Yes, until the Board - -

MR. FRAWLEY: And our new Section prescribes the rules that the Board must follow in considering that application.

THE WITNESS: There are two other cases that I just wish to make a short comment on. The first case is found on page 16. It is the Palisade Coal Company et al vs. The Canadian National Railway, (1928) 35 C.R.C. 47, The substance of this particular application was that a point Carbon was on a circuitous route to Winnipeg; that is on a circuitous C.P.R. route, and the railways had extended to Carbon the rate at the competitive point

Drumheller, and the Board said in that cases that that was quite acceptable for the railways to do that, and the point there is that they had given the intermediate point on a circuitous route the benefit of the competitive rate which applied as a result of another railway having a shorter mileage between these two points. I do not know whether I make that clear.

MR. FRAWLEY: Q. This is not a transcontinental water-compelled rate situation?

A. No, it is a circuitry problem, which would be permitted by this general example we have on page 3.

Q. We are not advocating any particular change in connection with the long and short-haul rule for circuitry purposes?

A. No, but the recommendations we are making apply in all instances where there is long and short-haul discrimination.

THE CHAIRMAN: You mentioned Drumheller in Alberta, and Carbon?

THE WITNESS: Yes, they are both in Alberta.

MR. FRAWLEY: It is in the Alberta coal fields. Do you want to say anything more about the Palisade Case?

A. Then the result of that case was to extend to the intermediate point on a circuitous route the rate which applied from the competitive point, and the Board said, in effect, that that is all right. Then, on page 18 at the bottom of the page, and over on page 19, we mentioned Central Alberta Dairy Pool Ltd. and Sunny Alberta Creameries Ltd. v. C.P.R. and C.N.R. (1936) 46 C.R.C. 10. There we find that the Central Alberta Dairy Pool was asking the Board to put in the competitive rate as maxima to the intermediate/^{point} on a circuitous route. The Board said that

the circuitous route is privileged to meet the short-line mileage without extending the compelled rate to non-competitive points. You have two situations which we would submit are comparable in the Board's view, and in one case, if the railways have done it, that is fine, and in the other case, where they have not done it, they say also that is fine.

That would complete our summary of the administrative history of the long and short-haul rule cases we have collected.

MR. FRAWLEY: Between pages 10 and 20 we think are representative cases on this point which the Board might want to examine more fully, but Mr. Harries has only mentioned this -

THE CHAIRMAN: When you say the Board, you mean us?

MR. FRAWLEY: Yes, I mean the Commission. Then you are passing on to Section C of Part 2 which you call "The History of the Canadian Transcontinental Freight Rate Structure."

A. On Page 20?

Q. Yes.

A. In Part C we turn our attention to the transcontinental freight rate structure. Prior to this we have been discussing long and short-haul discrimination in general, and for the balance of the Brief we really direct our attention to the transcontinental situation.

Then, dealing first with the class rate structure, we find that prior to the Western Freight Rates judgment in 1914 there was a considerable element of long-and-short-haul discrimination in the class rate structure. The particular method which was used in constructing the Fort William

to Vancouver class rates, which we detail on page 21, had the effect of associating that portion of the transcontinental haul with the American rate structure.

Because the American structure was below the Canadian and more especially because the American inter-coastal rates were much more competitive than the Canadian, this arrangement almost automatically assured long-and-short-haul discrimination in Canada, and we note on page 21 that there was a five cent differential applied to Vancouver in addition to the rate from Missouri River points to Seattle, and we also note that the Canadian Pacific Railway at page 91 of Part I of their submission indicate that this was removed by order of the Board, and I believe they said in 1906 -

THE CHAIRMAN: Do I understand you to say that the rest of your Brief is given over to transcontinental?

MR. FRAWLEY: To the transcontinental long-and-short-haul discrimination rather than leaving the circuitous discrimination, because it is the transcontinental discrimination that affects Alberta particularly almost wholly at the moment. That is our complaint.

THE CHAIRMAN: I just wanted to make sure.

MR. FRAWLEY: The passage on page 91, I think is this, "The Board, in Order dated August 11th, 1906" -

THE CHAIRMAN: Mr. Frawley, are you giving your whole time to the discussion of the rate from the east to the west?

MR. FRAWLEY: Well, largely. We will instance some rates from the west to the east, but our principle complaint is the rates from Groups A and B to Calgary and Edmonton versus Groups A and B to the west coast.

This passage says at page 91 of Part I of the

Canadian Pacific Railway Brief:

"The Board, in Order dated August 11th, 1906, ordered elimination of the arbitrary of 5¢ over the Seattle rates on freight traffic which originated in Eastern Canada."

Is that what you are referring to?

A. Yes, and that is in contradistinction to what we have said on page 21, where we have said that this arrangement continued until September 1, 1914. I have not checked what the C.P.R. says, but I am quite prepared to believe that we are wrong, and I would like to point out that the source of our information was page 117 of Railway Freight Rates in Canada by R. A. C. Henry and Associates, and there they indicate that this 5 ¢ differential was in effect from April 17, 1899, to September 1, 1914.

Q. The Henry study was a study done for the Rowell-Sirois Commission?

A. Yes.

Q. All right, going on -

A. And as we indicate on page 22 of the Brief after the Western Rates Case, there was no longer discrimination of the long and short-haul type in the class rate structure, and Table I on page 22, which is taken directly, or, which is an excerpt from a Table which appears in the report - on page 21 - this Table I is an excerpt from a Table which appears in the report of the Western Rates Case. You will note the rates in the first line are the rates which were in effect prior to September 1, 1914, and there you will note that the rate on a first class commodity was \$3.43 to Yale, and was \$3.00 to Vancouver, which indicates that it costs 43¢ more to take a shipment from Fort Arthur to Yale than it costs to take it through Yale and into Vancouver.

THE CHAIRMAN: What was that year -- 1914?

A. Yes.

Q. What was the reason given for that preference?

A. It was the way in which they constructed the rates from Fort William and was due to the competition from American carriers.

Q. American carriers?

A. Yes, and there would be some element of water competition in it, also, I would suspect.

Q. Well, there was no Panama Canal competition then?

A. No, but there was a railway which ran across the isthmus and they also used to go around the bottom. Then, in certain class commodities you have some discrimination, and even before 1914 there was no long and short haul discrimination below fourth class, as we indicate here. After the Western Rates Case they readjusted these class rates so that the rate to the intermediate point was never greater than the rate to the competitive point, so that there was no long and short haul discrimination in the class rate structure.

Q. You say "they adjusted the rate". Do you mean the Board, or the railway themselves?

A. The Board, sir, in the Western Rates Case.

Q. That was in 1914?

A. Yes, sir. Then, turning to the commodity rate situation, what we have done to indicate the manner in which these have been handled, is to apply, commencing at page 24, and going through to page 35, graphs of the manner in which the class rates and the competitive rates have altered from 1918, and I may say, that our research indicates that transcontinental competitive commodity

rates were of importance before 1918. That is as far back as we were able to go on it, and I am quite willing to admit we may be completely wrong on it.

MR. FRAWLEY: You have made it clear that the rates which go into Vancouver at less than the rates into Calgary are competitive rates, in the main?

A. Yes, they are the transcontinental competitive commodity rates.

THE CHAIRMAN: They are transcontinental, they are competitive, and they are commodity?

MR. FRAWLEY: That is right, sir, the transcontinental competitive, commodity rates.

A. Figures 1 to 12 then, which appear on pages 24 to 35 are taken from Appendix A, Schedule 1, and that is to be found commencing at page 112 and this schedule has been revised because we found certain errors in it, and what it does is to trace the movements in commodity rates on these twelve what we would term representative commodities, from 1918 to 1948.

Q. Now, schedule 1 of Appendix A extends following page 111 through to page 119?

A. Yes.

Q. It consists of fourteen pages, and it has been revised and revised copies have been supplied to the Commission?

A. Yes.

Q. And it should be marked "revised"?

A. It is marked "Revised". It is marked right in the heading, Appendix A, schedule 1, revised, pages 112 to 118 inclusive.

Q. Could you say that your figures running from page 24 to page 35 are figures taken from, or built

from the information in Appendix A Schedule 1 Revised?

A. No, pardon me, the figures are taken from the old Schedule 1, not the revised one. Otherwise, we did not have time to revise the figures, and all we were trying to do was to just indicate the general movements and they are accurate enough for that purpose. To indicate just what we have done here it may be useful if we considered figure 4 on page 27 for a moment.

Q. Now, figure 4 on page 27 you want to discuss in just a little detail with the Commission, I understand?

A. Yes.

Q. To indicate what your point is?

A. We have detailed the rate in cents per hundred pounds on the abscissa and the years on the ordinate. Taking first the solid line, and I may say the solid line is the rate which would apply in the absence of special competitive or commodity rates, we find that on the first day of August 1918 it was at \$1.76.

THE CHAIRMAN: Any particular reason for selecting the rate on axes?

MR. FRAWLEY: No, my friend Mr. Sinclair has just "axed" me that.

MR. COVERT: That is better than butchers' blocks.

MR. FRAWLEY: I think it is to sort of counter-avail Mr. O'Donnell's butchers' blocks. We were not trying to be sharp or anything of that sort.

A. No, the solid line which commences at \$1.76 on the first day of August 1918 moved to \$2.04 on August 15, 1918, and on September 17, 1920 was increased to \$2.78. That is indicated from the graph.

THE CHAIRMAN: The topmost extension is \$2.78?

A. Yes sir. Then the competitive rate moved in a somewhat similar fashion until, as you see, in 1933 it took a precipitous decline to something below \$1.50. Then in 1934 it went down again to about \$1.25 and it continued there until 1939 when it was raised to a dollar and eighty some cents. This is a general pattern of the others. The spread which there is between the standard rate and the competitive rate is indicated in Appendix B, Schedule 2, and this has been revised also in line with the revisions of Appendix A, Schedule 1. This is on page 138, sir. There we have related the competitive commodity rate with the class rate, and we see there that on August 1, 1918, the fifth class rate on axes was \$1.76. The competitive rate that particular day happened to be higher than the class rate. That was because there was a period of about 15 days there in which there was some difference in minima or they had not altered the competitive rate.

THE CHAIRMAN: Where is the competitive rate shown?

A. It is the second figure, sir, to the right of the words "axes" sir. Fifth class \$1.76. Next we follow down and the one below that the competitive rate is 187.5.

Q. That is the competitive rate on axes also?

A. Yes.

Q. What rate then would the axes go on?

A. The fifth class rate on this particular day.

Q. Is that a commodity rate or is it not? It is just an ordinary class rate?

A. It is a terminal rate.

Q. Then, how can the ordinary class rate be less than the competitive rate?

A. Sir, there was this period from August 1st to August 15th in which that situation prevailed. There were increases going on at that time and I believe the reason was that they had not adjusted the relationship between those rates, or there was a difference in minima or something, altering it; I am not sure. That is a very unusual situation. It would probably be better if we moved to August 15th 1918, when we get that straightened out. There you find a fifth class rate of \$2.04 and the competitive rate is $187\frac{1}{2}$.

Q. That is carried over?

A. Yes sir, so that the competitive rate is 91.7% of the class rate. Then between September 13th and the 20th you have got another difficult period.

MR. FRAWLEY: Of the same kind?

A. Yes, the same problem.

Q. Where the competitive rate goes higher than the fifth class rate?

A. Yes. Then, moving to September 17th, 1920, we find that the competitive rate was 89.9% of the class rate. Then, as you move across through the years you can see the changes which took place in the relationship which existed between the competitive rate and the rate which, in the absence of the competitive rate, would probably move the traffic. We get to 1932 and we find that the competitive rate is 62% of the class rate, and then in June 1933 the competitive rate was 51.7% of the class rate, and that situation continued for six years - a little better than six years, until December 1st 1939, when the competitive rate was then 76.4% of the class rate. Then, moving through the increases that took place recently and arriving at the latest situation, we find that the competitive rate is 86.7% (that is the last figure, sir) of the class rate.

Q. And that brings it right up to date?

During this period there

was a general feeling of

optimism and confidence

in the future of the

country and its people

and a sense of

unity and purpose

in the face of adversity

and a feeling of

hope and faith

in the future of the

country and its people

and a sense of

unity and purpose

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in the future of the

country and its people

and a sense of

unity

and a feeling of

hope

in the future of the

country and its people

and

a sense of

unity

and a feeling of

THE CHAIRMAN: I don't see that figure.

A. Maybe you have not got the revised one.

Q. Pardon me, I was looking at the wrong one.

A. It was revised merely to bring it up to date and to show the 86.7%. It is rather interesting to note that before the 8% increase was applied the competitive rate was 93.5% of the class rate today which has dropped in this case to 86.7%, which puts it below what it was on September 15th, 1948.

Q. That means that the competitive rate in itself has not been completed?

A. Yes.

MR. SINCLAIR: And that is one of the competitive rates that the railways are studying since that particular judgment came down along with all other commodity rates. These decisions have to be given some time to operate. The traffic office is rather busy these days.

COMMISSIONER INNIS: How do you explain this fluctuation in the early days?

A. I think it was due to two factors sir. First, to the active ship competition which came in at that time and probably just as important, if not more important, due to the market competition which got particularly keen at that point.

(Page 11906 follows)

MR O'DONNELL: Q. There was very strenuous water competition, was there not, at that time?

A. I already said that.

Q. Vancouver-St. Lawrence, and so on.

A. I already said that.

MR FRAWLEY: He has just said that.

MR O'DONNELL: Well, I may be a little bit behind.

COMMISSIONER INNIS: Q. Yes, but on other commodities the same sharp fluctuation is not evident?

A. Well, I think on any particular commodity it would be one or other of those factors. I cannot separate them out at all.

Q. Your preceding one, dry goods, for instance---

A. Yes. Well, if you take the worst example that we have of a low relationship, it is on canned goods, sir, which is the tenth commodity down there, and you find that---

Q. That is your tenth figure, is it?

MR FRAWLEY: The third from the bottom, sir, still on that same sheet.

THE WITNESS: On Schedule 2, Appendix B.

COMMISSIONER INNIS: Q. Well, you have not charted them out in the case of axes?

A. No. I think I have charted the canned goods out here, sir.

THE CHAIRMAN: Q. You say canned goods is the worst example?

A. Yes, sir.

Q. What about canned goods?

A. The figure is on page 32.

MR FRAWLEY: It is on page 32.

THE WITNESS: Number 9; page 32 of the brief,

figure 9. That indicates that the percentage relationship -- pardon me; turning to Appendix B of Schedule 2, we find that the percentage rate on canned goods in 1932 fell to 43.4% of the ordinary rate, and---

MR FRAWLEY: You see, the schedule, my lord, the revised Schedule 2, Appendix B, the long sheet.

Q. All right, Mr. Harries.

A. Then from 1934 to 1941 the competitive commodity rate on canned goods was only 37% of the class rate. At that time, sir, you had canned goods moving from eastern Canada to Vancouver on this tariff at 90 cents, and you had them going into Calgary and Edmonton at I believe \$1.98, so that you were being charged more than twice as much to take them to Calgary as it cost to get them to Vancouver; and I said, sir, that is on this tariff. There is another tariff which applied on canned goods, and we find that at one point they were charging a rate of 65 cents on canned goods.

THE CHAIRMAN: Q. To where?

A. To Vancouver ; so that the 65-cent rate would be compared with the \$2.42 rate, which would make it about 25%, so the competitive rate was actually about 25% of the rate which would apply in the absence of competition.

Q. And which did apply to inland points?

A. It did not apply to inland points, sir. They were paying 65 cents to get the canned goods in Vancouver, and we were paying \$1.98 to get them in Edmonton.

MR FRAWLEY: We would like to file that, sir, because that is not in---

THE CHAIRMAN: Q. What rate were you paying in Edmonton to make it \$1.98? The full class rate?

A. Yes, I believe it was a terminal rate out of Fort William.

Q. You did not get the competitive?

A. No, sir. As a matter of fact, at that time it was cheaper to ship the canned goods out to Vancouver and then haul them back into Edmonton.

Q. That is not the case now, is it?

A. As a matter of fact, it is, sir.

Q. It is still the case?

A. Yes, sir.

MR O'DONNELL: Q. They ship them direct now, don't they?

A. No. I was going to bring that up. Today the situation on canned goods is that you haul them to Vancouver for \$1.40, the charge to Edmonton is \$2.59 direct, and you can haul them from Vancouver back to Edmonton at a rate of a dollar and -- I forget the rate.

MR SINCLAIR: Surely the witness is not trying to leave the impression -- I know that that is not the impression he wishes to leave -- that the goods do move to Vancouver and then are shipped back again, because the railways protect the Vancouver rate plus the back haul to the intermediate point, so that the actual goods do not move to the terminal point and then back again.

THE CHAIRMAN: You say this price at Edmonton is only if such a thing did happen?

MR SINCLAIR: I beg your pardon?

THE CHAIRMAN: I say this price would be payable, this rate would be applicable to Edmonton, only if such a back haul took place?

MR SINCLAIR: Yes.

THE CHAIRMAN: And you say it does not take place.

MR SINCLAIR: It would never be applicable, sir, because the railways will protect the combination, even

though the tariff rate to Edmonton would be higher.

THE CHAIRMAN: I see. If there were such back shipments you would reduce the rate to Edmonton; is that it -- from Vancouver?

MR SINCLAIR: No, sir. If the goods were shipped say from eastern Canada to Edmonton, and on the rates the rate from eastern Canada to Vancouver and back to Edmonton made lower than the single rate from eastern Canada to Edmonton, we would protect the combination Vancouver back haul on the Edmonton rate.

THE CHAIRMAN: What do you mean by protect?

MR SINCLAIR: We would not charge more than the combination of the Vancouver and the back haul.

COMMISSIONER ANGUS: You mean that your rate to Edmonton is only a paper rate if it is greater than the rate to Vancouver plus the rate from Vancouver back?

MR SINCLAIR: Quite so.

MR O'DONNELL: And the goods go direct to Edmonton.

THE CHAIRMAN: That leaves it this way, then -- in Edmonton do you pay the rate from Toronto to Vancouver and back to Edmonton?

MR SINCLAIR: That is the rate you pay.

THE CHAIRMAN: That is the rate you pay?

MR SINCLAIR: Yes; even though the goods do not move that way.

THE CHAIRMAN: Why should you pay? That is the point. We are anticipating, probably.

MR SINCLAIR: The answer is, my lord, that makes lower than the rate from eastern Canada to Edmonton.

THE CHAIRMAN: And you think that is a complete answer, do you?

MR SINCLAIR: I say that is why we do protect it.

THE CHAIRMAN: Well, you call it a protection.

MR FRAWLEY: That is the complete answer, my lord; my friend may as well say so.

MR O'DONNELL: The just and reasonable rate as fixed by the Board is the rate to Edmonton. We are not comparing like with like at all; we are comparing a trans-continental rate with a rate that---

MR SINCLAIR: Your lordship asked me if I considered that the complete answer.

THE CHAIRMAN: Unless we argue it now finally and for good, we had better wait. It is true I asked a question.

MR SINCLAIR: You asked me if that was the complete answer.

THE CHAIRMAN: Yes.

MR SINCLAIR: I say that there are many answers to it, and in due course we will put them on the record.

THE CHAIRMAN: Well, if there are many, we had better hear them later.

COMMISSIONER INNIS: Q. Are we to understand that these fluctuations which vary greatly between commodity and commodity are due to changes in water rates?

A. I find it awfully difficult to answer that, sir, because my own opinion after studying it is that they are due in some part to changes in water rates, but there is a very substantial element of market competition in these rates, and that they are due to a number of factors, two of the most important of which will be the water rate and the market competition.

Q. Would the changes in prices have any effect?

A. I would be surprised if they did have, sir.

Q. You do not think they have?

A. I do not think so, no.

COMMISSIONER ANGUS: Q. Have you any index of typical ocean freight rates for this period?

A. No, sir, I have not. We have calculated a movement to those ports -- that is the extent of the competition -- but not the movement in ocean freight rates themselves.

COMMISSIONER INNIS: Q. If the water rates are being bombarded by something which causes this violent fluctuation and which is carried over immediately into the commodity rates, then one is inclined to ask, what is the underlying explanation of the violent fluctuation, and if that is a result of some technological change or something which is beyond the control of the carrier, beyond the control of transportation. Does it mean that you will cut yourself off from such advantages if you insist that they be ironed out?

A. I think if you insisted that they be ironed out you might cut yourself off from some advantages such as that, where they are due to what I would call a real change in technology, that is, where it just takes less work, less input to get the same output. However, I think these are probably less related to that kind of thing than they are to simply the commercial situation, and in the nineteen-thirties, of course, that may or may not have been related to technological changes.

MR O'DONNELL: It occurs to me that some part of the explanation might be that the boats from the west were bringing lumber and canned salmon and that kind of thing, and then were looking for cargoes on the way back at any price they could get.

THE WITNESS: That is what the brief says, Mr. O'Donnell

MR O'DONNELL: That may be, but I am just com-

menting on the fact.

MR COVERT: Mr. Chairman, I am wondering if I might give this document that they have been talking about an exhibit number: 135.

MR FRAWLEY: Will you describe it?

MR COVERT: It is "Supplementary Statement, rates on canned goods, eastern Canada to Pacific Coast."

EXHIBIT 135: Supplementary Statement, rates on canned goods, eastern Canada to Pacific Coast.

MR FRAWLEY: Q. Can you tell us in a word why this statement is produced at this time, and where it is to be related to the rest of your brief?

A. Well, dealing with these twelve commodities, we had drawn the rates from the transcontinental competitive commodity tariff, and in the instance of canned goods we found that there was actually a lower rate than was published in this particular tariff which we were analysing, and for the record we thought that the rates which actually moved the traffic should be included, and that, sir, is why we have filed this supplementary statement.

Q. So Exhibit 135 does show the rates which moved the traffic during the time that these rates were in effect?

A. Yes, and is to be related to Appendix A, Schedule 1, of our brief.

Q. And, as the exhibit itself shows, these rates have now been cancelled?

A. Yes. If you go back---

THE CHAIRMAN: They bring us away back to 1939.

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: What is the use of them today? Is it to show what the situation was then?

MR FRAWLEY: To show the depressed relationship during that period, yes, that is right, sir. Our brief would not really be correct, because we do go into the history of it, and by studying what you might call the regular tariffs, then we found this special tariff on canned goods, and of course we thought we were bound, as I think we were, to bring it to the Commission.

Q. Very well, now, Mr. Harries.

MR SINCLAIR: But it has no application now.

MR FRAWLEY: That is perfectly clear.

THE WITNESS: We were discussing the relationship between the rates from Toronto to Vancouver and the rates from Toronto to Edmonton today in connection with canned goods, and I said, sir, that you could ship canned goods from Toronto to Vancouver for \$1.40, and you would pay \$1.12 to ship those canned goods from Edmonton---

THE CHAIRMAN: Q. I did not get the figures.

A. I am sorry. \$1.40 from Toronto to Vancouver, and \$1.12 from Vancouver back to Edmonton.

Q. \$1.12?

A. Yes, sir.

Q. That makes \$2.52?

A. Yes; and the published rate from Toronto to Edmonton today is \$2.59.

Q. Well, which actually is being paid? How do your canned goods get from Toronto to Edmonton?

A. The railways, who are in a position to know, say that you would pay the \$2.52 rate.

Q. That is what Mr. Sinclair just told us.

A. Yes. Now, I am not in a position to argue with them about it, but I would suggest, sir -- at least, I have been told by two shippers of canned goods in Edmonton that they---

Q. Shippers of canned goods?

A. Two receivers of canned goods, wholesale people; that they do not automatically get the benefit.

Q. But suppose they did, suppose you paid on canned goods \$2.52 instead of \$2.59, would you be satisfied?

A. No, sir.

Q. I see.

MR FRAWLEY: Oh, no.

THE CHAIRMAN: Well, that is what we want to be told. After all, between the other two rates there is only 7 cents. What rate do you think ought to apply?

MR FRAWLEY: All we want, sir, is to have the long-and-short-haul rule observed, the new rule that we propose.

THE CHAIRMAN: Well, under the new rule that you propose, what would you pay from Toronto to Edmonton?

MR FRAWLEY: Well, I will speculate with you, my lord, and I would say we would pay the port rate; the rate to Vancouver would be spread back to intermediate points.

THE CHAIRMAN: You would be satisfied to do that?

MR FRAWLEY: Oh, yes, sir; that is our case, sir.

THE CHAIRMAN: I see.

MR FRAWLEY: Then you might say to me--

THE CHAIRMAN: You do not want any less than the rate to Vancouver?

MR FRAWLEY: As sort of the second step, as you suggested, in the case of Regina, the Regina Board of Trade.

THE CHAIRMAN: In this case, then, you would

want to pay \$1.40.

MR FRAWLEY: Running it out to the logical result, sir, yes; but I wish to make it plain, as I said a moment ago, that I am not here asking that this Commission say that Edmonton should pay \$1.40 instead of \$2.59. I say to this Commission, my lord, with respect, change the rule for us, and we think we will then get the \$1.40 rate.

THE CHAIRMAN: And the rule would read as in---

MR FRAWLEY: Yes, my lord; in other words, there should be no automatic violation of the rule, but there should only be a violation after a case has been made out, as outlined in that section.

THE CHAIRMAN: That is the new section 314(A), is it, or is it the other one?

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: The new section 314(A)?

MR FRAWLEY: Yes.

THE CHAIRMAN: That would mean a hearing before the Board, would it?

MR FRAWLEY: Not necessarily so. We do not necessarily say a hearing. We do say there should be approval first by the Board, and we indicate the things that the carrier would have to satisfy the Board about before it would be allowed to---

THE CHAIRMAN: If the Board from now on, this section being adopted, in a given case granted the carrier what they are asking for -- that is to say, what is practically in effect today -- would you be satisfied?

MR FRAWLEY: Yes, my lord, that is exactly so. We would be satisfied if we had that kind of law to operate.

THE CHAIRMAN: If this new section was the guidance to the Board, you would accept the result?

MR FRAWLEY: Yes, sir; yes, my lord.

THE CHAIRMAN: All right.

THE WITNESS: Dealing with this combination, sir, from Toronto to Vancouver, I want to be absolutely fair in this connection, but I talked this matter over with the General Manager of Macdonald Consolidated in Edmonton, who are owned by Safeways, as you probably know---

THE CHAIRMAN: Q. Are they receivers of canned goods?

A. Yes, sir, large receivers.

Q. What do they say?

A. He told me that they received canned goods; they would order a 60,000-pound car of canned goods from Toronto to Vancouver.

Q. From Toronto to Vancouver? A. From Toronto to Vancouver, yes.

Q. I thought you were going to talk about some Edmonton transaction?

A. Well, they have an office on the coast too. They would move that 60,000-pound car through Edmonton and out to Vancouver, and take out 20,000 pounds of canned goods.

Q. On the way back?

A. No, in Vancouver, sir, and ship the 40,000 pounds of canned goods back to Edmonton, and he said that he tried to get the railways to let him either take out the 40,000 pounds in Edmonton to save them hauling it all the way back and then to send the 20,000 on, or let him take the 60,000 out, and they would not do it, so he said that he has had many cars hauled all the way over the Rocky Mountains and back again to Edmonton. Now, as I say, that is what he told me, and that is as much as I know about it.

MR SINCLAIR: I think we may as well clear this up right now. That certainly is likely correct, and

that is not what I said, because all that he is doing there is taking a car, distributing or selling part of the load in Vancouver, and shipping some of the load back again. Now, the point that I was making is, a shipment that was going from Toronto to Vancouver and the same shipment back again, that is, 70,000 pounds we will say to Vancouver and 70,000 pounds back again, that they would not have to make that movement to get the rate, because the rate would be the combination of the rate to Vancouver and the back haul. That combination would be given on the shipment to Edmonton. There would be no necessity to move it to the coast and back again. But if he is going to start monkeying, if the shipper is going to start monkeying, with the minima on the shipment, I can well see that they could come to the situation that the witness suggests.

THE WITNESS: It is not a matter of monkeying with the minimums at all, sir. The minimum that applies on a carload to Edmonton is 40,000 pounds; the minimum that applies on a carload to Vancouver, as the railways have taken a good deal of trouble to point out, is 60,000 pounds.

MR SINCLAIR: Seventy.

THE WITNESS: It was sixty at this time, I believe.

MR O'DONNELL: Seventy now.

MR SINCLAIR: Talking about today.

THE WITNESS: Well, seventy; it is still forty. And that means you can move it at seventy to Vancouver, take out nearly half the carload at Vancouver, and you are really not paying any freight at all on that, and then shoot the forty back to Edmonton, and get a lower rate than you would get if you used the published rate between Toronto and Edmonton.

MR SINCLAIR: Q. On 40,000 pounds?

THE WITNESS: Yes.

(Page 11920 follows)

THE CHAIRMAN: Well, if that is so, then it presents us with a conundrum.

MR. FRAWLEY: That is the Canadian Freight rate structure as far as getting canned goods into Edmonton is concerned.

THE WITNESS: I won't be sure of the forty thousand. It may be slightly higher - it may be forty-five or fifty - but there is enough difference so you could have an awful lot of canned peas out at Vancouver for nothing on this system.

MR. FRAWLEY: Q. Will you go on to what you want to say about the general portion of your Brief?

A. I think that completes everything we want to say on Part C. Turning now to Section D at page 36, and here in Section D generally we are dealing with the theoretical and practical aspects of competition in the matter of transcontinental traffic, and in Sub-section 1 we describe the competitive aspects of this carriage connected with American Railway competition, and in Sub-section (a) on page 37, the situation in connection with goods of Canadian origin moving from one point in Canada to another point in Canada is detailed. There we come to the conclusion that having, for example, a shipment of shoes originating in Toronto and being sold in Vancouver, that there is no American rate competition in connection with that movement, and that the American railways are parties to the transcontinental tariff that is filed in Canada here, They can move shipments, but there is no rate competition. The reason for that is that you cannot move things out of Canada into the United States and then from the United States into Vancouver on local rates in order to defeat the through rate that is published. Theoretically, you might be able

to do it if there were no duties by actually consigning them to a point in the United States and then reconsigning them to Vancouver, but that would be a rather unlikely situation.

The same problem comes up in connection with a shipment of goods from a point in Canada to a point in Canada not transcontinental, i.e. you are shipping goods from a point in Ontario to Alberta. Today, in spite of these American increases which we have been reminded about, we find that by using a combination of local American rates, you can actually defeat the through rate from the Canadian point to, say, Calgary.

THE CHAIRMAN: Q. When you say "defeat", you mean to get a lower rate?

A. To get a lower rate, and we have two examples here which indicate the situation today.

Q. On what page?

A. This is an exhibit, Mr. Frawley.

MR. FRAWLEY: I want to offer an exhibit showing a statement of what the rates would be on canned goods in carloads from two points in Essex County, Ontario, to Calgary, using the United States freight rate structure.

EXHIBIT 136: filed by Mr. Frawley.
Statement indicating rates on canned goods in carload lots from two points in Essex County, Ontario, to Calgary, using the United States freight rate structure.

Q. Will you just explain this Exhibit 136? There are two examples there - -

A. Taking the first example, if you wanted to move a carload of canned goods, 60 thousand pounds of canned goods, from Leamington, Ontario, to Calgary, you could

move them via the Canadian route, and the charge would be \$2.59, so that is the Canadian charge, \$2.59.

THE CHAIRMAN: Q. Where is that \$2.59?

A. It is not on this statement.

MR. FRAWLEY: If your lordship would be good enough to note right on Exhibit 136, it might be useful, that the rate from Leamington Ontario, to Calgary would be \$2.59 via the all-Canadian rate route, and the rate from Belle River would also be \$2.59. All right?

A. And another way to move this shipment might be from Leamington to Detroit, which would cost you 37¢, and then move it from Detroit to Sweet Grass for \$1.50 on the American route, and then turn it over to the C.P.R. at Sweet Grass and move it up to Calgary for 62¢, giving you a rate of \$2.49. That is, if you could use this combination of local rates via the American route, you could save 10¢ a hundred for canned goods.

THE CHAIRMAN: Well, can you use that?

MR. FRAWLEY: No, you cannot.

MR. O'DONNELL: Our rates are not intended for the type of use that my friend tries to make of them. They are probably for the purpose of protecting the American railways' interest in that type of shipment.

MR. FRAWLEY: I am pointing out to the Commission that there is a Canadian Freight Association rule which tells me that I must use those rates to get canned goods from Essex County, to Calgary, and at this point I do not want to argue but I want to put into the record two sections of the Railway Act. I would like an opportunity of discussing this more fully later, but at this point I want to call to the Commission's attention Section 338 of the

Railway Act, and Section 431. Section 338:

"338. When traffic is to pass over any continuous route from a point in Canada through a foreign country into Canada, or from any point in Canada to a foreign country, and such route is operated by two or more companies, whether Canadian or foreign, the several companies shall file with the Board a joint tariff for such continuous route."

THE CHAIRMAN: That is the obnoxious part of it, is it, that they are allowed to sit down and produce a joint rate which is greater than the local rates?

MR. FRAWLEY: No. First of all, they do not file a joint tariff.

THE CHAIRMAN: The section says they may provide a through route -

MR. FRAWLEY: No, they say that several companies shall file with the Board a joint tariff. So, in this case, moving from Belle River to Calgary, the railway would start out from Belle River to Detroit and several United States routes would take it to Sweet Grass, and the Canadian Pacific would take it from Sweet Grass to Calgary.

THE CHAIRMAN: In that case they would have to file a joint tariff?

MR. FRAWLEY: Yes.

THE CHAIRMAN: And the section says that the government is to pass on that, to determine whether or not it is to pass.

MR. FRAWLEY: Well, what I argue is, that parliament contemplated that traffic would be offered to pass from Belle River, Ontario, to Calgary, via the United States, and I say that is the contemplation of parliament when that section was drafted, and they have said, when that is offered

to pass, then you must file a joint tariff. Then, they do not file it.

THE CHAIRMAN: Who could make the offer?

MR. FRAWLEY: Well, the x-y-z- canning company. Supposing Heinz and Company at Leamington offered to the railway a car of canned goods, and said, "Take this to Calgary, Alberta, via Detroit and Sweet Grass, Montana," -

THE CHAIRMAN: Today a shipping company has no right to say that?

MR. FRAWLEY: No, because this rule stops them at the start.

THE CHAIRMAN: Do you wish to have it made compulsory on the railways to have a joint tariff and to accept the goods for such a route?

MR. FRAWLEY: Yes, but if you will allow me to develop my point by showing Section 431 -

MR. SINCLAIR: How are you going to compel the American carriers?

MR. FRAWLEY: The Board of Transportation Commissioners for Canada have no jurisdiction over that American carrier. They have jurisdiction over the Canadian carrier. Here is the way they purport to deal with it in Section 431. This is the penalty section:

"431. All goods carried or being carried over any continuous route, from a point in Canada through a foreign country into Canada, operated by two or more companies whether Canadian or foreign, shall, unless such companies have filed with the Board a joint tariff for such continuous route, be subject upon admission into Canada, to Customs duties, as if such goods were of foreign production and coming into Canada for the first time."

THE CHAIRMAN: Well, that closes the road to you?

MR. FRAWLEY: Yes, because the third Sub-section - no, it is not quite closed yet. The third section closes it. This third Sub-section says:

"3. If any such duty is paid by the consignor or consignee of such goods, the same shall be repaid on demand to the person so paying, by the company or companies owning or operating so much of such continuous line or route as lies within Canada."

If I ask the Heinz Company to ship me a car of canned goods to Calgary, and they went through without this restrictive rule in the tariff, and they went through to Calgary in that fashion, and I had to pay duty on them in Calgary, I could then collect that duty from any of the companies over whose line they moved. I could collect it from the Canadian Pacific who draw it from Coutts to Calgary, Alberta, and I say to prevent that sort of situation, where the C.P.R. would have to pay duty from Coutts to Calgary, they have in collaboration with the American railroads seen to it that this restrictive section is placed in the tariff, and I say that on the authority of no less an authority than the Interstate Commerce Commission, because it is what the Interstate Commerce Commission said to me when I took the matter up with them. I will only read a short extract from a letter which I have received from the Interstate Commerce Commission.

MR. SINCLAIR: I think you should put in the letter to the Commission and the reply.

MR. FRAWLEY: There is nothing for me to conceal from the Commission or even my friend. I pointed out to the Interstate Commerce Commission that it was regrettable

that the receiver or shipper of freight in Canada should be prohibited in these few instances where they could look to the American freight rate structure for a more favorable rate, and found that they were defeated, and such great care has been taken that they defeat us at the first leg of the journey, so the car would never leave Leamington or Belle River, because it is the first movement from Belle River to Detroit, 28¢ - the tariff reference is number 13D, and by my Exhibit No. 136 you will see that the rate of 28¢ is to be found in the Canadian Freight Association tariff 13D, from Belle River to Detroit. You will see from the footnote that in that particular tariff, 13D, which would take the car on the first leg of its journey, this restrictive clause is found. My friend says, "What did you write to the Interstate Commerce Commission?", and my friend can have a copy of the letter, but I pointed out that it was rather regrettable that in these few instances the receivers or shippers of freight in Canada would be prevented from using the American rates, and Mr. Jensen writes to me under date of November 23, 1949;

"You also suggest, if I understand the penultimate paragraph of your letter correctly, that if this restriction is actually effective, it is unreasonable and ought not to be allowed to stand. The restriction was presumably -- almost certainly -- set up at the instance of the Canadian and not the United States railroads, the purpose being to prevent the diversion of traffic moving between Canadian points to lower-rated routes lying partly in the United States. Thus the question you raise as to whether the restriction is a reasonable one really resolves itself into a question of whether there is justification for a higher basis

of rates in Canada than in this country -- a matter upon which obviously no opinion can be expressed here. So far as the restriction itself is concerned this Commission could neither order it enforced nor removed, for the reason that we have no statutory authority over the rates charged by the railroads in the United States on traffic moving from a foreign country through the United States to the same or another foreign country. "

That is the whole story, my lord, and if you ask me what I can do about it, I say that the railways of Canada have very neatly circumvented the provisions of Sections 338 and 431, and I cannot do anything about it, and I am left, so to speak, behind the eight ball as far as getting canned goods from Essex County into Calgary.

THE CHAIRMAN: You say if there is no joint rate, it is the fault of the Canadian railways?

MR. FRAWLEY: Yes, because I think that the American carriers would be glad to carry all of the canned goods that Heinz and Company could put out in Leamington, and they would be very glad to carry them from Detroit to Sweet Grass, Montana, for \$1.50, but I am defeated even although the Railway Act of Canada tells my friend to file a joint tariff.

THE CHAIRMAN: How would you remedy that by legislation? You cannot compel the American line to join in framing a joint tariff?

MR. FRAWLEY: No, that is right.

THE CHAIRMAN: Then what are you going to do about it?

MR. FRAWLEY: Well, I know one finds it a very difficult situation, and I think it is something that should be brought to the people of Canada, the government

of Canada, and the Parliament of Canada. There is not any question that when Parliament wrote 338, they did not expect that we would find anything like what we now find in rule 210 in the Canadian Freight Association tariff 13D, because it is such a simple way of circumventing it.

(Page 11934 follows)

MR. O'DONNELL: Might I ask my friend if it is not a fact that there is a joint tariff published in compliance with the provisions of Section 338?

THE CHAIRMAN: When you say there is a joint tariff, what do you mean?

MR. O'DONNELL: Well, a tariff published and filed in compliance with the provisions of Section 338 which my friend says has been violated.

THE CHAIRMAN: Is that tariff applicable to the shipment he illustrates here?

MR. O'DONNELL: It is applicable to the shipments which are contemplated by Section 338.

THE CHAIRMAN: But that does not get me very far. You say that 338 then applies to only certain kinds of shipments, do you?

MR. O'DONNELL: Well, it applies to shipments which are to pass over any company's lines from a point in Canada through a foreign country into Canada and the several companies which are to have a hand in the hauling.

THE CHAIRMAN: But who governs that? Who says that the shipment is to pass over foreign territory? Could the shipper?

MR. O'DONNELL: The shipper can designate the route he wishes but what the shipper cannot do though, is to take a tariff which is published for a local haul such as the one that is referred to and use it in combination with other rates and particularly with American rates. But the point is, as I understand it, that Section 338 has not been violated as my friend says, because I asked him if it is not a fact that there is a joint tariff published.

THE CHAIRMAN: Yes, but Mr. O'Donnell, what does this joint tariff apply to? Does it apply to this kind of a shipment?

MR. O'DONNELL: Yes, it would apply to a shipment such as Mr. Frawley refers to.

THE CHAIRMAN: Then, what is to prevent the Belle River, man sending his goods around that way?

MR. O'DONNELL: Well, the joint through tariff is higher than a combination which they ingeniously evolve through using two or three local rates.

THE CHAIRMAN: Why can't they use the local rates?

MR. O'DONNELL: Because these particular rates as published are restricted inasmuch as they are not to be used as the railway says, and the railway is subject to the Board of Transport Commissioners. My friend has recourse to them and I don't think he has gone there, and the Act expressly says that they are not applicable to rates between points in Canada but they ^{are} subject to the control of the Board. Now the rate under the joint through tariff is \$2.59.

MR. FRAWLEY: Where is the joint tariff? The Canadian rate is \$2.59.

MR. O'DONNELL: No, but the tariff that is filed in compliance with the provisions of 338 which is a joint tariff and which is joined in by all the American carriers on the face of the thing. There are 35 or 40. There is a tariff published now.

THE CHAIRMAN: Do I understand, Mr. O'Donnell, that there is then a through tariff providing for this type of shipment?

MR. O'DONNELL: Yes, that is right, my lord.

THE CHAIRMAN: But that through tariff is higher than a combination of all the local rates?

MR. O'DONNELL: That is correct, and when my friend so eloquently said that 338 had been violated, I submit it has not; there is a joint through tariff published. It so happens that the rates in that joint through tariff are higher

in this instance than a computation under 338 would give.

MR. FRAWLEY: Just look at the rates that he says are ingenious. We did not take some abnormally low rates on page 28.. We took a rate from Belle River. Now then, we point out that we only pay \$1.50 from Detroit to Sweet Grass, Montana, because that is the rate to Seattle, and there is no violation allowed in the United States on transcontinental traffic, so we get \$1.50 to Sweet Grass, Montana. That is what my friends do not like and then when I get it to Sweet Grass, Montana, then I pay 62¢ to take it from Coutts to Calgary - something under 200 miles - 62¢. I am asking no favour from the Canadian Pacific Railway but we pay 28¢ at the Detroit end and 62¢ at the Calgary end. That is what my friend calls an ingenious way I have made up this rate.

THE CHAIRMAN: Do you say, Mr. Frawley, that Section 338 has been violated by the railways?

MR. FRAWLEY: That they do sir? My friends/^{say}that is only a form, there is no substance in it at all. They publish as a joint through rate the \$2.59 in Canada. Let us say they have had a formal compliance, a mock compliance with Section 338. They have taken the \$2.59 and it is not \$2.59 at all. The car could go from point to point. If I wanted to pay the duty I could get it there. If I wanted to pay all the duty going into Detroit and then rebill it to Sweet Grass and then pay the duty going into Calgary I could get it in there for \$2.40.

MR. SINCLAIR: Could you?

MR. FRAWLEY: I certainly could. No, I could not even do that but what I could do is this. I could ship these goods in from Belle River to Detroit as a purely local shipment.

THE CHAIRMAN: Who would pay the United States duty?

MR. FRAWLEY: Anybody that was foolish enough to ship

it in there like that. Then we would move it to Sweet Grass, Montana, for \$1.50 and now it is in Sweet Grass. I would then clear customs into Coutts, pay whatever duty is required and even after doing that then we would find "I cannot use those rates". I could use them as locals. I do not think there is anything to prevent me from having a series of separate unrelated shipments, and I defy my friend to say I cannot ship it in for \$2.40.

THE CHAIRMAN: But you must face this reality, that you would have to pay two customs duties?

MR. FRAWLEY: Yes, so we could add to this really that you could use them if you wanted to pay two customs duties and use them as separate unrelated shipments, Belle River to Detroit, Detroit to Sweet Grass, and Coutts to Calgary.

THE CHAIRMAN: Are you asking for a compulsory through rate to be lower or at least as low as a combination of these various local rates because you cannot compel the United States railroads?

MR. FRAWLEY: No, I am going to put it this way. I want to give some consideration to what I call this outrageous situation. I would like to make a submission. It is very understandable why I am discussing this thing with some heat. Here are canned goods which move into Calgary by thousands and thousands of tons every year and we are prevented by the deliberate conduct of the Canadian railways from doing anything but paying that high rate. Not only is it undesirable but ^{it} but/is unacceptable that we have to pay twice as much as Vancouver. That is one grievance. Then we look around and say "Could we possibly get these canned goods out here by a Canadian route?" and we find the railways have again stopped us from doing it, so we are in their bondage and pay the highest rate in the book, and I would defy my friends to find a higher rate anywhere than \$2.59 to move 100 lbs. of

canned goods 2000 miles from Toronto to Edmonton. It just can't be done and still they prevent us from saving 20¢ -

MR. O'DONNELL: 19¢.

MR. FRAWLEY: We would have to say "No, we cannot save it; we are in the bondage of the Canadian railroad". Perhaps other people as well as the people of Alberta are tired of the Canadian freight rate structure.

MR. O'DONNELL: Of all the thousands and thousands of rates that are covered by that joint tariff which is provided for by Section 338, I think about the only one that my friend could happen to find with that particular situation is with regard to canned goods.

MR. FRAWLEY: You would almost think that you would let me have it then. You would almost think you would make an exception.

MR. O'DONNELL: I want to say one more thing on the joint tariff, my lord. There are any number of American carriers who join in that tariff, participating carriers, and when my friend says we prevent him going that way, we do not and it so happens that the joint through rate as provided by this Act is a few cents higher than the combination of locals he uses.

MR. FRAWLEY: I do not deny the fact that the American railroads and the Canadian railways all belong to the same club.

THE CHAIRMAN: Does it seem rational that through rates should be higher than a combination of local rates?

MR. O'DONNELL: Well, if one factor in the combination of local rates is put in for certain purposes, then I think that it is not unreasonable that the rates might be restricted to use in certain instances, and in any event, the Board of Transport Commissioners could look into that complaint if it were justified.

COMMISSIONER INNIS: Are we to understand that the Board of Transport Commissioners has no authority over those goods moving through the United States and that the Interstate Commerce Commission has no authority?

MR. FRAWLEY: That is the situation with which I am faced. I go to the Interstate Commerce Commission and they say they can do nothing and the Board of Transport Commissioners say the same thing.

MR. O'DONNELL: If you go to the Board of Transport Commissioners and complain about the Canadian end of the rate, surely the Board of Transport Commissioners have jurisdiction over them.

COMMISSIONER INNIS: Would they have jurisdiction over the American rates?

MR. FRAWLEY: No, and I might as well say, sir, that they have not been content to put this tariff restriction on the freight rate which begins the shipment - you find that same tariff restriction over all the rates over which they would have to go. They did a very complete job of it. The next rate, looking at my exhibit, ^{which shows} \$1.50 under Transcontinental Freight Pure Tariff 4W, you will probably find I cannot use that \$1.50 rate.

MR. SINCLAIR: That is why I think those letters should go into the record, Mr. Chairman.

THE CHAIRMAN: All right, you say there is no objection Mr. Frawley?

MR. SINCLAIR: This violent language has been used by my friend - Mr. Frawley -

MR. FRAWLEY: It is not nearly so violent as the situation calls for.

THE CHAIRMAN: It depends how you read it.

MR. FRAWLEY: In the record it will be very quiet.

COMMISSIONER INNIS: Is there a part of the rate

structure which is out of the jurisdiction entirely of the Interstate Commerce Commission or the Board of Transport Commissioners?

MR. FRAWLEY: Well, it happens in Ontario that the two fruit districts are very adjacent to the United States market. There is the Niagara Peninsula which is near Niagara Falls, New York and the Belle River area near Detroit, and I do think if it were not for those restrictions they would go through the United States at a lower rate. In answer to one of the questions by one of the Commissioners a moment ago, to Mr. O'Donnell "Is it not unusual that a through rate should be higher than the combination of the local rates?" I am told that in the United States that is quite out of the question. There cannot be a through rate higher than the combination of the local rates. That is an exception.

THE CHAIRMAN: Now, one of the things we are asked to review here is to review The Railway Act with respect to international rates?

MR. FRAWLEY: Yes.

THE CHAIRMAN: What do you suggest? You show us this, in your opinion, lamentable state of affairs. What do you suggest we should do about it? Perhaps you do in your brief or one of your briefs?

MR. FRAWLEY: My friends say no, which indicates the study they have given to that which is very much appreciated, but I think, sir, that I would like to - I must not have, as you said to me the other day--two or three opportunities to discuss this, but I would, before I say a final word to the Commission, like to consider whether there is any way of extricating myself from this situation.

THE CHAIRMAN: Then later on you might tell us what use we could make of that committment we have?

MR. FRAWLEY: Yes my lord, all right. The Governor General in Council has asked you to look particularly at international rates.

COMMISSIONER ANGUS: Mr. Frawley, is the general source of this particular difficulty, in this case, that canned goods treated in the United States rather more favourably in relation to other traffic than they are in Canada?

MR. FRAWLEY: That there is a better rate, sir? I cannot say yes or no to that, sir. I do point to the fact that that \$1.50 is the so-called Spokane rate which cannot be greater than the Seattle rate, and the Seattle rate is a so-called water compelled rate. That is why the railways do not wish to allow a receiver in Canada to take advantage of what they regard probably as a very low rate. That may be so, but to say whether or not canned goods (I would like to be able to answer you more precisely) whether or not canned goods is in a better classification in the freight classification in the United States than in Canada, I do not know.

COMMISSIONER ANGUS: You remember they complained here that the classification was too high?

MR. FRAWLEY: That is true, sir. I think that is, if I may say, a well-taken point there. It might be because we heard the Canadian Cannerymen saying that they were in too high a classification. I have heard very lately that there is a trend in the United States now, because of the recent high increases, that canned goods are now being lowered - I don't say reclassified, although reclassifying is probably the way they do it, but motor truck competition is becoming so effective in respect of the movement of canned goods in the United States that the canned goods are going on a lower rate basis. There might be something in that, sir.

MR. FRAWLEY: Now, Mr. Harries, you say you had completed and you had reached -

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THE WITNESS: If I may say, the most of this discussion as far as this brief is concerned, is simply to point out that with goods of Canadian origin moving from one point in Canada to another point in Canada, it would be only in very special circumstances that American railway competition would be of significance as carrier competition.

Now, on page 38 we mention goods of Canadian origin moving to American markets or goods of American origin moving to Canadian markets, and there we note that the controlling rate in that instance would be the lowest transcontinental rate, because the American transcontinental rates name Canadian destinations and the Canadian transcontinental/^{Rates}name American destinations, and it is only fair to say, I think, that the long and short haul discrimination about which we complain is essentially the discrimination which takes place on goods originating in Canada and moving to another point in Canada.

Then, the third type of situation which we note is that concerned with foreign goods destined to points in either Canada or the United States, and Canadian or American goods destined to foreign ports, and those are export and import rates, and actually the kind of long and short haul discrimination there is hardly significant. That is the carrier competition then.

The water competition stems from the fact that the water rates are usually less than railroad rates, and this is page 40, sir. The water transport is in itself highly competitive and it is extremely flexible. We note that there are three types of water competition which are experienced by Canadian railroads, inland and coast-wise, which is of no consequence as far as long and short haul discrimination is concerned on transcontinental traffic. The intercoastal is significant at those points of Central and Eastern Canada touched by navigable water or near enough to be affected by it and the

coast of British Columbia and we list there some factors which we think determine the extent of water competition. Then, we go on to point out that there are general considerations in view in the intercoastal competition picture and we quote a letter there which we received from a gentleman in New York City.

THE CHAIRMAN: What page is that on?

A. 41, sir, at the bottom of the page. We point out there that there is a unique rate relation existing in almost every movement. Then we mention the institutional aspects of particular freight relations at the top of page 42, and indicate that they are likely to be every bit as important in establishing a rate as the pure rate element, and I may say that we would consider the factors (a) to (e) listed on page 41 as being pure rate elements as such. We make note of the fact that you cannot dismiss the fact that in the main an important source of intercoastal carrier competition in Canada has come from boats owned or chartered by British Columbia lumber interests. Then we mention the case that Mr. O'Donnell referred to earlier this morning. We also note that the tendencies to equalize commercial opportunity in the various parts of the Eastern industrial area by the formation of large rate groups has also tended to obscure the pattern which one might think to find in the way of competitive rates. For the most part it costs the same on the railway under a transcontinental competitive commodity rate to ship something from Montreal to Vancouver as it costs to ship it from Sudbury to Vancouver. So that, although Sudbury is a good deal less affected by water competition than Montreal, of the intercoastal character, you have them both on the same rate, and that is why we now observe that it has tended to obscure the pattern that might follow in this competition. We do know that it has an effect because

of the market competition which exists between domestic manufacturers and overseas manufacturers, particularly the competition which exists, of course, in the Vancouver market.

I also should have mentioned, sir, in dealing with American railway competition that although there is no competition in the sense that there is carrier competition for goods originating in Canada and moving transcontinentally, there is a good deal of competition generated by the American carriers in the nature of market competition. Then on page 43, sir, we turn to the main periods of competition in transcontinental traffic. I might suggest, sir, that at the bottom of the first complete paragraph on page 43 that extra title might go into the submission, that is "Main Periods of Competition in Transcontinental Traffic".

THE CHAIRMAN: Before you come to paragraph 1?

A. Just above that sentence there, sir. It would go in just before we say "The competitive factors in transcontinental traffic".

Q. What is the heading?

A. "Main Periods of Competition"

Q. "Main periods" in the plural?

A. Yes sir "of Competition in Transcontinental Traffic."

MR. FRAWLEY: Yes?

A. Then, the first period which we discuss sir, is the period prior to the operation of the Panama Canal from 1869 to 1917. I may say, of course, that the Panama Canal opened before 1917 but it was not really a source of competition until that date. I do not think there is anything I need to mention during that period. That was just characterized by competition from various sources. On page 44 there is the competition, from 1918 to 1940.

Q. Could you just briefly describe when that period was?

A. That is the period from the opening of the Panama

Canal when you got ship competition started at least to the end of ship competition or that which was occasioned by the commencement of the war. There is one sentence I would like to read on page 44, sir. As we will point out later unlike -

Q. Bottom of page 44?

A. Yes sir. Unlike non-competitive areas in the United States which now had the substantial protection of an effective long-and-short-haul rule, prairie territory was accorded none of the advantages that improved water transport made available. That is probably not stating it as definitely as we could. There may have been some advantage certainly but in comparison with other areas similarly situated we did not have the advantage.

Q. You go on to say "On the contrary, prairie territory became the one remaining area on the north American continent where standard rates on long-haul traffic could be imposed with any degree of success"?

A. Yes. Then going on I would like to mention the fact that the Government of Canada started up the inter-coastal traffic after a number of people had had great difficulty in trying to make a go of it after the first world war, and financially it was not a very successful venture for the government, but it did have the effect of service, and when they withdrew from it in the early thirties the Canada Transport Company took it over and managed to continue it. So we have the situation there from 1922, I believe it was, to about 1932, where the government was running a competition to keep the trans-continental rates down and it was in a sense, I believe, the marine arm of the Canadian National Railway that undertook this. The real competition in intercoastal traffic came in the thirties, and we indicate, sir, on pages 48 and 49

the extent of the intercoastal movement by boat to Eastern Canada by Vancouver and New Westminster, and we would refer there, sir, to Appendix A, Schedules 2, 3, 4 and 5 on pages 120 to 129, which indicate the total movement during the 1928 to 1948 period. I might note, sir, that the figures for 1948 were not available when we made this Appendix up but since then I have found from the Harbour Commissioners that in 1948 there were no imports to Vancouver and there were 180 tons of exports, that is movements from Vancouver to Eastern Canada.

Q. Where should those figures be noted, Mr. Harries?

A. Water borne shipments to Eastern Canada.

Q. Page 120?

A. Yes, 1948 should read "Port of Vancouver 180, Port of New Westminster nil, Total 180 tons".

THE CHAIRMAN: That is for 1948?

A. Yes sir.

Q. Port of Vancouver how much?

A. 180 tons, sir.

Q. That means thousands, does it?

A. No sir, just 180 tons; that is all it moved.

Q. What about New Westminster?

A. None, sir. It is on Schedule 3 on page 121 - "1948 nil, nil, and total, nothing".

MR. FRAWLEY: I do not want to prolong the more or less continuous reference to the movement of this boat from Eastern Canada to Western Canada but I might note -

THE CHAIRMAN: Where is that boat now?

MR. FRAWLEY: Well, I will tell you sir, what has happened. In the Montreal Gazette of today, 7th of December, 1949, it is to go from Montreal to Vancouver in April. It reads this way "No vessels scheduled from winter ports from Montreal"; then "S.S. Oceanside April 20th to 25th (I presume

that is 1950) and S.S. Islandside May 20th to 25th", so
I think it is a fair inference from that, sir, that the next
shipment that will be moved by the Munson-Clark Company
will be next April and May.

(Page 11959 follows)

THE CHAIRMAN: Q. I want to make sure I understand this. Water-borne shipments from eastern Canada to the ports of Vancouver and New Westminster -- was there none at all in 1948?

A. No, sir, none.

Q. And where do you show what went from New Westminster and Vancouver to the eastern coast?

A. That is the one previous, sir, on 120.

COMMISSIONER INNIS: Q. This is all 1948-49 figures?

A. Yes, sir.

THE CHAIRMAN: Q. Just 180 tons out of Vancouver?

A. Yes, sir.

Q. And nothing out of New Westminster?

A. No, sir.

COMMISSIONER INNIS: Q. These charts on 13 and 14 cover the whole?

A. Yes, sir, they do. On page 48, the chart presents the picture there.

THE CHAIRMAN: It may not be pertinent here, but I just wonder how the trans-ocean freight shipments are holding up now. Are they recovering, or what is happening out of Vancouver?

MR FRAWLEY: Q. Have you anything to tell the Commission about that?

THE CHAIRMAN: Through the Panama Canal to Europe.

THE WITNESS: The last thing I saw, sir, was a reference in the Wheat Pool budget, where they said that there were twelve or thirteen grain carriers tied up at Vancouver; they could not meet the rate going through the Panama Canal.

Q. THE CHAIRMAN: Q. They could not meet the---

A. They could not meet the rate, I think, by British ships from the eastern coast.

MR SINCLAIR: We can get some information for the Commission to show the period from the 1st of January to the 30th of April, 1949, from the U.K., Belgium, and various countries, landings at Pacific coast ports.

THE CHAIRMAN: And from Vancouver back to Europe?

MR SINCLAIR: I have not seen figures from Vancouver to Europe, but I will look into that at the adjournment.

THE CHAIRMAN: Thank you very much.

MR FRAWLEY: Q. All right, Mr. Harries, will you proceed?

A. Figure 13, which shows the intercoastal traffic to eastern Canada---

COMMISSIONER INNIS: Q. On page 48?

A. On page 48; indicates, sir, that there was a very substantial movement of traffic from 1928 to 1930, that it dropped down from 1930 really to 1939 with the exception of the one year 1936. Figure 14 on page 49, sir, indicates that there was a good deal of traffic moving from eastern Canada to Vancouver and New Westminster from 1934 to 1939. That, I think, is all I would have to say in connection with that.

MR FRAWLEY: Q. What do you pass to now?

A. To page 50, subsection 3, competition from 1940 to 1948. There we just detail the history since 1940. The history is also given graphically in these charts, which just indicates that there is not any intercoastal water carriage going on now, and we give the opinion of several people in connection with its likely

resumption, and so on. Then I think we pass on to section E on page 52, the extent and effect of long and short haul discrimination at intermediate points.

Q. In a word, what do you propose to discuss under this branch of your brief?

A. We propose to discuss first of all the extent in terms of the number of items which are affected by long and short haul discrimination at Calgary and Edmonton on transcontinental traffic; and, secondly, sir, the effect that this discrimination has upon people who are trying to do business in Alberta under those circumstances.

Q. In other words, you are endeavouring now to show to the Commission the extent to which the cities of Alberta pay higher rates than the rates to the coast?

THE CHAIRMAN: I see, Mr. Frawley, your complaint is about what you call the competitive commodity rate structure. Does that mean competitive commodity rates only?

THE WITNESS: Yes, sir.

MR FRAWLEY: Yes, yes; the transcontinental competitive commodity rate structure, that is the structure which carries the goods through to the ports of New Westminster and Vancouver.

THE CHAIRMAN: First you get the commodity rates, and after that you get the competition which lowers them again; is that it?

MR FRAWLEY: I think when it came in it came in all at once as a competitive commodity rate.

Q. Isn't that right, Mr. Harries?

A. Yes, that is my understanding of it, sir.

MR FRAWLEY: I do not think it was in stages.

THE CHAIRMAN: Then your complaint is confined to that kind of rate?

MR FRAWLEY: Oh, yes, sir.

THE CHAIRMAN: All right.

THE WITNESS: We would now like to file with the Commission an exhibit.

MR FRAWLEY: Now, this is the large exhibit, sir, that we sent to the Commission some time ago, in a very limited number of copies, because it is a very formidable sort of document. Perhaps we might have a number for it now.

MR COVERT: Exhibit 137.

MR FRAWLEY: Will you just describe it?

THE CHAIRMAN: Q. What would you call it?

A. This exhibit, sir, is a comparative statement of freight rates from eastern Canada to prairie points and to Vancouver, showing where the rates to Vancouver are lower than to Calgary and Edmonton, and indicating the point at which the Vancouver rate is equalized.

EXHIBIT 137: Comparative statement of freight rates from eastern Canada to prairie points, showing where rates to Vancouver are lower than to Calgary and Edmonton, and indicating the point at which the Vancouver rate is equalized.

THE WITNESS: An example, sir, may make that quite clear. Take the first example we discuss, which is sulphate of alumina.

THE CHAIRMAN: Have we the exhibit here?

MR FRAWLEY: No, but what is there in the brief is a representative extract from the large brief -- page 54, sir.

THE WITNESS: I was going to say---

MR FRAWLEY: The exhibit number is 137, and I think, for convenience' sake, it might be noted, at page 54.

THE CHAIRMAN: Part of 137.

THE WITNESS: It is an extract, sir, yes.

MR FRAWLEY: 137 is the large exhibit, and this is just a representative extract from it.

THE WITNESS: Taking sulphate of alumina in carloads, the rate from Arvida, Quebec, to Vancouver, at the time this exhibit was compiled, was \$1.82. The rate from the same point to Calgary was \$2.54. The rate from the same point to Hargrave, Manitoba, was \$1.82. So that we would say in this instance that Hargrave, Manitoba, is the equalization point. That is, they would get the same for hauling this carload to Hargrave as they would by hauling it past Hargrave right to Vancouver. All these items which we have listed in 119 large pages are items which have a rate as at the date of the compilation of this statement, which are lower to Vancouver than they are to Calgary or Edmonton.

MR FRAWLEY: I just would like to take the Commission through this. This exhibit, sir, this Table 2, running through pages 54, 55, 56, 57 and 57 and 57A, you can see the significance of it at a glance, sir. If you turn, for instance, to molasses in tank cars, on page 55, moving from groups A and B, it is \$1.21 to Vancouver, it is \$2.40 to Calgary, and you have to go back to Eagle River, Ontario, which I take it is somewhere between Fort William and Winnipeg, to find that \$1.21 rate equalized. That gives you just a picture, sir, if I may be pardoned the expression, of where the apex in the Canadian freight rate structure lies, because it is through this exhibit that I have every confidence that I will regain the apex from my friend Mr. Britnell, who tried to take it away from me the other day.

THE CHAIRMAN: Let us just stay where the molasses is for the moment. I will ask you a question. What you want done is, is it, to have a rate which will

be \$1.21 from Chatham---

MR FRAWLEY: \$1.21, sir, is the rate.

THE CHAIRMAN: You say that same rate should be given to Calgary and Edmonton.

MR FRAWLEY: That is right; we say under the new set of rules, unless the railways show that it should be permitted to charge more to us than to Vancouver, then we would have \$1.21 spread back, and it would be spread back, of course, all the way to Eagle River, Ontario. That is a picture of the kind of relief that we seek; but I may say again, we are not seeking any recommendation of what the rate should be, just a change in the law.

Q. Now, is there anything else? Can we pass---

THE CHAIRMAN: You say the onus is on the railroad to show why the rate is more than \$1.21 to Calgary?

MR FRAWLEY: Yes. Expressed in another way, the railway would have to go to the Board to get permission to depart from the strict application of the long-and-short-haul rule; that is another way of expressing it, sir.

Q. Now, do you want to say anything more yourself about Table 2, Mr. Harries?

A. We are not very good at calculating the number of man-hours that go into these things, but this exhibit took a terrific amount of time, and was completed using rates which were in effect in July 1948. It includes then the 21% increase, but it does not include the 15% or the 8%, and we make some comparisons regarding the---

MR SINCLAIR: Q. Does that statement apply to your Table 2 revised, pages 54 et seq?

A. Table 2 revised is simply an extract from this table, yes.

Q. It does not have the 15% or other increases or any changes in September?

A. It is as at July 1948, Mr. Sinclair.

MR FRAWLEY: It is as at that date. Then you can answer your own questions. It is as at July 1, 1948.

THE CHAIRMAN: What is the reference there?

MR FRAWLEY: The Table 2. The sheet is marked "Table 2 revised", sir. Now, you may mark it, sir, that it is as of 1st July, 1948.

Now, we have something else to offer at this point. The amount of labour was, as Mr. Harries has said, terrific, but we did make a final effort to bring it up to the 22nd October, 1949, and now we have done that.

THE WITNESS: That is this Table 2, sir.

MR FRAWLEY: Notwithstanding the hours and hours which we spent in the preparation of that brief, I need hardly say that we would count it as naught to obtain relief from this discrimination, sir.

MR COVERT: This is called Table 2A; it is Exhibit 138.

EXHIBIT 138: Table 2A - Certain selected commodity items from exhibit illustrating the extent of long-and-short-haul violations in Alberta, as at Oct.22,1949.

MR FRAWLEY: Now, I would suggest, sir, that 2A could go into the brief just where you might expect, of course, following Table 2, and it, as it shows, brings the rates up to October 22, 1949.

MR SINCLAIR: Right after Table 2 revised?

MR FRAWLEY: Right after Table 2 revised, yes.

Q.. All right, Mr. Harries?

A. This Table 2A reflects the situation after the railways had had an opportunity to look at the transcontinental rates, and as a result of which they removed all the l.c.h. rates and they adjusted upwards in most instances the carload rates, and the change inasmuch as this sample that

we have in Table 2 is representative, the change that has taken place in the general situation could be indicated by the number which we have remaining in Table 2A, and the change which has taken place absolutely may be considered by referring to say the first commodity which we list, which is this sulphate of alumina again. Now, we find today that the rate from Arvida has gone up from \$1.82 to \$2.13. During the same time the rate to Calgary has gone up from \$2.54 to \$2.74, and we find that the equalization point used to be in Manitoba at Hargrave, and it has has now moved slightly further west, to McLean, Saskatchewan, so that the extent of the relief on that particular item can, of course, be realized from this comparison.

Q. Just take another one; sisal fibre, the equalization point has moved from Chater, Manitoba, west to Sintaluta, Saskatchewan---

COMMISSIONER INNIS: Where is that, Mr. Frawley?

On page 2?

MR FRAWLEY: No, still on page 1 of each exhibit. On 2A it is the sixth one down, sir. The molasses have liquefied and left, I suppose. Starch has not moved; it is still at Melbourne, Manitoba, but the rates have changed; the rate from Ontario now to Vancouver is--

THE CHAIRMAN: Where is starch?

MR FRAWLEY: Starch is on page 1 of 2A, and on page 2 of the other.

THE WITNESS: No; page 56.

MR FRAWLEY: Page 56.

Q. Will you take a look at starch, Mr. Harries, and tell us about that?

THE CHAIRMAN: You begin with starch on page 56; is that right?

MR FRAWLEY: Page 56, sir, the second item.

THE WITNESS: We find that the equalization point in July of 1948 was at Melbourne, Manitoba, and then we look at the situation today, unless these rates have been changed within the last several days, and we find that the equalization point is still Melbourne, Manitoba, which indicates that both these rates, the transcontinental rate and the standard rates, have taken the same percentage increases, and the result is that you are right where you started from, or where you left off, at Melbourne, Manitoba.

MR FRAWLEY: Otherwise I think the exhibits speak for themselves, sir, so we will pass from these tables and---

COMMISSIONER ANGUS: Has the equalization point of unfermented grape juice still got the singularly unfortunate name of Bonheur?

MR FRAWLEY: Did it leave Bonheur? I would not be surprised if it stayed there.

THE CHAIRMAN: To rejoice the heart of man.

THE WITNESS: Sintaluta.

MR FRAWLEY: Oh, it has gone to Sintaluta.

THE WITNESS: Commencing, sir, at page 57 in the brief, and continuing through to page---

THE CHAIRMAN: Q. What do you say?

A. Starting at page 57, sir, and continuing through to page 63, we have recorded some of the statements made by people in the intermediate territory, that is, in Alberta, at different times, what they said to the Rowell-Sirois Commission---

MR FRAWLEY: I was going to pass over those rather quickly. These things have been all said before, sir. They can be all summed up in a word. This back haul

rate, sir, does enable, so it is contended, the Vancouver receiver of freight to receive his goods at Vancouver, ship back and distribute in what is ordinarily regarded as Edmonton or Calgary distributing territory. That is the burden of these complaints, sir. We find that one---

THE CHAIRMAN: Distributing territory in Alberta?

MR FRAWLEY: Distributing territory in Alberta, sir. One man told us during the 30% case that he would find it more convenient to actually move his place of business from Edmonton to Vancouver, receive his dry goods at Vancouver, and supply his stores, his dealers, in the Edmonton area from Vancouver. Now, that is how seriously if affected that man's business.

MR O'DONNELL: That was three years ago.

MR SINCLAIR: He is still in Edmonton today.

MR FRAWLEY: Well, that is perhaps for other reasons, that I won't stop to expatiate upon.

THE WITNESS: That was not three years ago. I believe he made the same statement before this Commission.

THE CHAIRMAN: Somebody did.

THE WITNESS: Yes; I think that was---

MR FRAWLEY: Yes, that is at page 61.

THE CHAIRMAN: What is his name?

MR FRAWLEY: That is Mr. Holt of Dower Brothers Limited, a dry goods concern. He says, at the bottom of page 61:

"The full portent of this has been brought home to us by the fact that a Vancouver dry goods concern, previously operating with only an office in Edmonton has started construction of a warehouse in this city from which to distribute merchandise throughout Northern Alberta. It is quite obvious

that they expect an increased volume of sales due to the lower prices at which they will be able to offer their merchandise when the differential is removed."

MR SINCLAIR: That is the opposite to what Mr. Frawley said.

MR FRAWLEY: He is talking there about the mountain differential, which has come off.

THE CHAIRMAN: Where were you reading from?

MR FRAWLEY: At the bottom of page 61, sir.

THE WITNESS: There is just one thing I wish to mention in connection with this, if I may, and that is that as far as the business men particularly in Edmonton are concerned, these back haul rates have not been of overriding importance to them -- that is, the fact that the Vancouver man could distribute an article say into Jasper cheaper freightwise than the Edmonton man could get into Jasper and some of those points, has not been of particular concern to him, but today we see the development of highway transport and rail transport linking up the Prince George area with the Peace River area, and what that means is that the Vancouver man is going to be able, if this discrimination is allowed to continue, to service the Peace River area and cut off Edmonton, the gateway to the north. Before, you see, the Vancouver man to get into the Peace River area had to come back and go through Edmonton and then start out up the Northern Alberta. And if these highways go through, and railways, as we have every reason to suppose they will, then the Edmonton man is going to be cut out of this Peace River area because of the back haul, and there is a very great concern on their part about that situation.

THE CHAIRMAN: When was the last time that

all this was called to the attention of the Board, and in what way?

MR FRAWLEY: Well, sir, it was certainly drawn to the attention of the Board in the 1925-27 inquiry. I was going to say I was not there, but the record shows that it was discussed, because the Chief Commissioner in his judgment mentions it. Now, we say, with great respect to him and to the Board, that it did not receive the consideration at all that it deserves.

THE CHAIRMAN: No attempt has been made since by anybody to have the situation changed?

MR FRAWLEY: It was brought to the attention of the Rowell-Sirois Commission, sir.

THE CHAIRMAN: Yes, I know.

MR FRAWLEY: And what they said was that it was an interesting situation; I think that---

THE CHAIRMAN: That is what we are finding out now.

MR O'DONNELL: Never brought it to the Board.

THE CHAIRMAN: That is what we are finding out now, that it is an interesting situation.

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: But in the meantime, has anybody gone to the Board about it?

MR FRAWLEY: Q. Has anybody gone to the Board?

MR SINCLAIR: It is part of the general freight rates investigation the Board is now conducting under P.C.1487.

MR FRAWLEY: Who said it was part of it?

THE CHAIRMAN: I am asking, when was the last time that the Board's attention was called to this?

MR FRAWLEY: Q. Can you answer that directly?

THE CHAIRMAN: And by whom?

THE WITNESS: The Board's attention was called to it, sir, in connection with the 30% case, but Gainers have, not on the general matter but on a particular commodity, called the Board's attention to it in 1935. The Brock Western Company -- there was a case with the Board in which it was called to their attention in -- I am not sure of the date of that case.

MR FRAWLEY: In the late twenties, I think.

MR O'DONNELL: It is 38 C.R.C. 326.

MR SINCLAIR: 1931.

THE WITNESS: We give the reference in this brief.

THE CHAIRMAN: Twenty-one years ago.

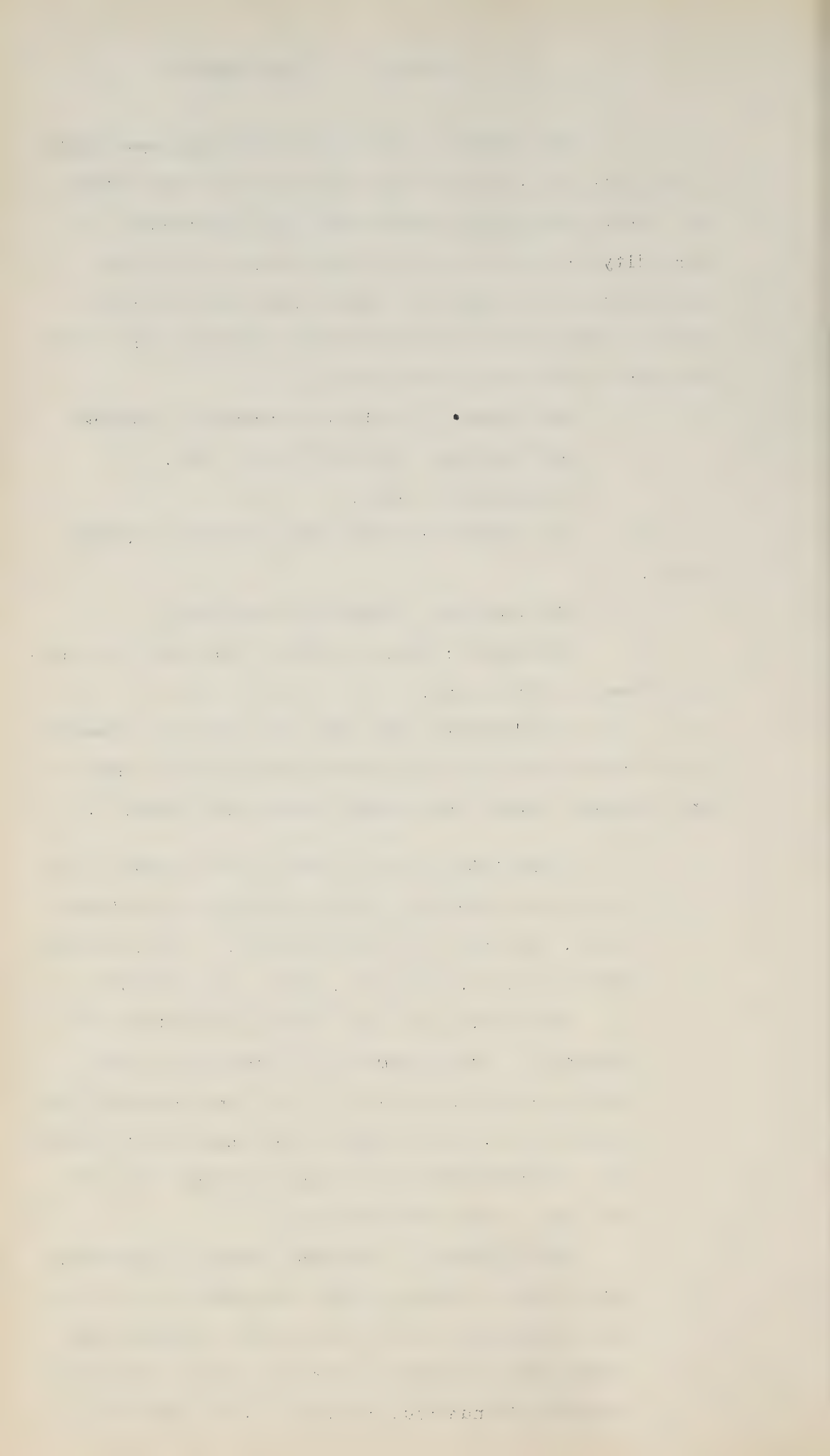
MR FRAWLEY: That is right, sir; and the relief was refused at that time.

MR O'DONNELL: But that very case was commented on in the 30% case, as your lordship will see, at page 51 and following, under the heading "Competitive Rates" ;

"Competitive rates to meet water, market, etc., competition have been under review in a great many cases. In Brock Co. (Western) Ltd. v. Can. Freight Ass'n 38 C.R.C. 326 at pp. 333-4, it is stated:-

'The Railway Act has express provisions permitting the establishments of competitive rates which will not be subject to the long and short haul clause, i.e., that greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction.

'The Railway Act contains specific provisions authorizing a reduced charge on traffic handled to meet competitive conditions without necessitating corresponding reduction in normal rates, and it has been held in numerous decisions of the Board that



comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates per se.'"

Then there are a number of other cases listed.

THE CHAIRMAN: What is that you have been reading from?

MR O'DONNELL: That is the 30% case, my lord. As late as that this whole series of cases was referred to and commented upon by the Chief Commissioner, and at pages 51 and 52 your lordship will find a number of those cases listed.

MR FRAWLEY: Well, I think that answers your lordship's question. They just do nothing for us, that is all.

MR O'DONNELL: They "don't do nothing for you"; they review it and say that the situation is justified; that is all they do. They say you have no case.

MR FRAWLEY: In a word, my lord, we must have a new statute, and that is why we are here before this Commission.

Q. Mr. Harries, can you finish what you have? I see you have only a few more pages. Can you get through the rest of your brief, coming to page 63, paragraph F or section F?

A. Yes. In section F we just discuss very briefly the attitude of the Canadian railroads and the long-and-short-haul rule. In particular I would wish to draw the attention of the Commission to the statement which we record at page 67, which comes from paragraph 48 of the Canadian Pacific Railway's outline submission, where they state:

"When a railway, by reducing a rate to meet competition, secures or retains some remunerative

traffic that it would not otherwise handle, there is benefit both to the shipping public and to the railway."

Q. Now, do you think, Mr. Harries, that the shortest way for you to comment upon that is maybe to read the paragraph you have on page 67?

A. Yes, I think so.

Q. Perhaps you would do that.

A. This is not by any means a certainty; from my reading of the railway position, this is one of the anchors, and I don't want to say that it is in sand, but I would like to say this, that the character of the traffic, the lines of road---

THE CHAIRMAN: You were going to read that; if you are anxious to finish before---

MR FRAWLEY: Q. Everything you want to say about that Canadian Pacific comment is there on page 67?

A. That is right.

Q. Now, you have a summary on page 68; could you summarize that for the Commission, please?

THE CHAIRMAN: That is a summary itself, isn't it?

MR FRAWLEY: That is a summary, yes, sir.

THE WITNESS: It is rather difficult to summarize a summary.

MR FRAWLEY: Q. Yes, that is true. Well, this concludes your comments on the Canadian experience with regard to the long-and-short-haul rule?

A. Yes. Can we take that as read in here?

MR FRAWLEY: That can be taken as read, very well, sir.

G. Summary of the Canadian Experience with the Long-and-Short-Haul Rule.

From the foregoing analysis it is apparent that long-and-short-haul discrimination has been a continuing characteristic of the transcontinental competitive commodity freight rate structure.

The reason for this obnoxious form of local discrimination has not been the same throughout its history. At first justification was sought mainly in American railroad competition, later in water competition, and finally in potential water competition. During the war period the Wartime Prices and Trade Board regulations prohibited rate increases of any kind. Overlaying, and frequently superseding these specific reasons market competition has been a continuing and subtle factor.

The effect of this discrimination has fallen with greatest force upon Alberta where the absolute and relative effects have been significant. It is submitted that the disadvantages arising from long-and-short-haul discrimination far outweigh any real advantages that might be claimed.

The Board of Transport Commissioners have exhibited in this matter a negative attitude. Nowhere can we find evidence to indicate that the Board or its officers have made an adequate attempt to analyze the competitive factors involved or to sufficiently weigh the relative advantages and disadvantages to the railways and to the intermediate points of the lower terminal rates.

It is our submission that the foregoing analysis indicates the necessity for a new approach to long-and-short-haul discrimination and specifically as it is found in the transcontinental rate situation. In as much the same problem has been of concern to shippers, railroads

and governments in the United States it is now our intention to present a statement of the American experience.

MR FRAWLEY: I will call Professor Locklin.

THE CHAIRMAN: After other interested parties are through with Mr. Harries, we go on to the American?

MR FRAWLEY: We will do that immediately, sir, and withhold the cross-examination.

---The Commission adjourned at 1:00 p.m. until 2:45 p.m.

(Page 11980 follows)

AFTERNOON SESSION

Wednesday, December 7, 1949.

THE CHAIRMAN: Yes, Mr. Sinclair.

MR. SINCLAIR: This morning, my lord, you asked about loadings for Europe from Vancouver, and loadings from Europe at Vancouver.

THE CHAIRMAN: Yes.

MR. SINCLAIR: What I propose to do is to make up a table for your lordship and the Commission as soon as I obtain the information, some of which I have to get from Montreal and Vancouver. Then I will file it with the Commission, if that will be satisfactory.

THE CHAIRMAN: Thank you very much.

MR. FRAWLEY: I call Professor Locklin.

PROFESSOR D.P. LOCKLIN, called.

MR. FRAWLEY: Q. Your name is D. Philip Locklin?

A. Yes.

Q. And you reside at Urbana in Illinois?

A. Yes.

Q. And you are Professor of Economics at the University of Illinois and have been since 1941?

A. Yes.

Q. And you served as principal transportation economist with the Interstate Commerce Commission in 1935?

A. Yes.

Q. And you have served as consultant to the following government agencies in the United States: National Resources Committee?

A. Yes.

Q. United States Maritime Commission?

A. Yes.

Q. National Resources Planning Board?

A. Yes.

Q. And you were Director of Interterritorial Freight Rate Studies for the Board of Investigation and Research in 1942 and 1943?

A. Yes, sir.

Q. And you are the author of "Regulation of Security Issues by the Interstate Commerce Commission", that work being published in 1927?

A. Yes, sir.

Q. And you are the author of "Railroad Regulation Since 1920", that having been published in 1928?

A. Yes, sir.

Q. And you are the author of "Economics of Transportation", the third edition of which was published in 1947?

A. Yes, sir.

Q. Then, Professor Locklin, you were retained by me, acting as counsel for the Province of Alberta before this Royal Commission, to collaborate in our submission in respect to the long and short haul rule?

A. Yes, sir.

Q. And you are responsible for Part III of this submission, beginning at page 69?

A. Yes, sir.

Q. And that submission contains an endeavour to outline for the Commission the American experience in the long and short haul rule?

A. Yes.

Q. Now then, without any further preliminaries, would you please proceed to put the submission into the record?

A. In Part III, at the beginning, I point out that we describe the process by which long and short haul discrimination was largely eliminated from the

transcontinental railroad route structure in the United States.

You will notice down towards the bottom of page 69 I have divided the history into five periods. The first period is from 1887 to 1897, which is the period from the enactment of the Act to regulate commerce to a court decision in 1897 which virtually nullified the long and short haul clause.

The second period, from 1897 to 1910, is a period during which the long and short haul clause was not particularly effective.

The third period from 1910 to 1918 is a period from the restoration of the effective long and short haul clause up to a time when transcontinental railroad rates were adjusted so as to eliminate long and short haul discrimination in large part.

The period from 1918 to 1932 is one in which there was some attempt to restore long and short haul discrimination in the transcontinental rate structure.

The period from 1932 to the present time is just the recent period in which there have been very few changes of interest in connection with this submission.

Q. Now, Professor Locklin, at the present time I understand there is no discrimination, no long and short haul discrimination in the transcontinental rate structure in the United States?

A. It would be incorrect to say "no discrimination," but there is very little.

Q. There is very little; and what you have done in this brief is to tell the story to the Commission of how that situation evolved?

A. Yes. Beginning on page 70 there is a discussion of the first period, and I shall read a portion of it:

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION

PUBLISHED WEEKLY

CHICAGO, ILL., U.S.A.

Vol. 11, No. 1

January 1, 1914

Subscription price, \$5.00 per annum in advance

Single copies, 15 cents

Entered as second-class

March 1, 1905, under post office no. 100,000

Post paid at Chicago, Ill., under no. 100,000

Acceptance for mailing at special rate of postage provided for in

act of October 3, 1917, authorized on July 1, 1914

Postmaster: This publication is entered as second-class

matter, July 1, 1914, under no. 100,000

Post paid at Chicago, Ill., under no. 100,000

Acceptance for mailing at special rate of postage provided for in

act of October 3, 1917, authorized on July 1, 1914

Postmaster: This publication is entered as second-class

matter, July 1, 1914, under no. 100,000

Post paid at Chicago, Ill., under no. 100,000

Acceptance for mailing at special rate of postage provided for in

act of October 3, 1917, authorized on July 1, 1914

Postmaster: This publication is entered as second-class

matter, July 1, 1914, under no. 100,000

Post paid at Chicago, Ill., under no. 100,000

Acceptance for mailing at special rate of postage provided for in

act of October 3, 1917, authorized on July 1, 1914

Postmaster: This publication is entered as second-class

matter, July 1, 1914, under no. 100,000

Post paid at Chicago, Ill., under no. 100,000

Acceptance for mailing at special rate of postage provided for in

act of October 3, 1917, authorized on July 1, 1914

Postmaster: This publication is entered as second-class

A. The Period from 1887 to 1897

The period from 1887 to 1897 was dominated by the interpretation placed upon the long-and-short-haul clause (section 4 of the Act to Regulate Commerce) as it was originally enacted. That clause, as enacted in 1887, provided

"That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance"

MR. EVANS: I have not got the early Act. I wonder if the witness could complete the quotation. I see there are dots, showing something is left out.

MR. FRAWLEY: We would be glad to put that into the record.

THE WITNESS: I have not got it here, but I do have the complete Act in its present form.

MR. EVANS: I have that, too. But I wonder what the old form of this section was.

THE WITNESS: We shall endeavour to supply it.

The Commission was empowered "after investigation" to make exceptions "in special cases" and "to prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act."

For the purpose of this analysis the important question is what circumstances created

such a dissimilarity of conditions and circumstances at through and intermediate points as to make it not unlawful to charge more for the shorter than for the longer haul without the prior approval of the Commission.

Perhaps I ought to say that when I use the word "Commission" in this brief, it refers, of course, to the Interstate Commerce Commission.

This question came before the Commission in 1887 in the proceeding known as *In Re Louisville and Nashville Railroad Co.*, 1 I.C.C. 31, and later in *Railroad Commission of Georgia v. Clyde Steamship Co.*, 5 I.C.C. 327 (1892). The position taken by the Commission in the first of these cases was reaffirmed and stated concisely in the second. In the words of the Commission,

"The competition of carriers subject to the Act with carriers not amenable to its provisions plainly constitutes dissimilar circumstances and conditions which justify a reasonable departure from the rule of the fourth section if the competition be actual and controlling in respect to traffic important in amount."

"This includes", the Commission went on to say, "the competition of independent water lines, independent state railroads and foreign railroads, where they have not so connected themselves with the carriage of interstate traffic as to thereby become subject to the Act." (5 I.C.C. 327, 391). The reference to "state railroads" is to railroads operating a line lying wholly within a particular State of the United States. The foreign railroads referred to were obviously Canadian roads. (1 I.C.C. 31, 80-81).

Cases involving long-and-short-haul discrimination in the transcontinental rate structure which came before the Commission in the period from 1887 to 1897 were considered in the setting which we have described, namely, that if through rates were controlled by competition of carriers not subject to the Commission's jurisdiction, and such competition did not operate at intermediate points, the through and local traffic was not being handled under substantially similar circumstances and conditions, and hence there was no violation of the long-and-short-haul clause. After the decision of the Commission in the Clyde Steamship Co. Case, above mentioned, no circumstances alleged to justify departure from the long-and-short-haul principle, other than those mentioned in that case, would be recognized by the Commission as justifying departure from section 4 without specific authorization of the Commission.

Since justification of most seeming departures from the long-and-short-haul clause in the transcontinental rate structure was alleged competition by water for the through business, the Commission was called upon in several cases to determine whether such competition really existed, and whether or not it was a controlling force depressing the through rates below a normal basis. We will now consider briefly the cases involving this question which came before the Commission in the period from 1887 to 1897.

I shall not read all of these cases, but I would like to direct your attention to two or three, very briefly. The first one mentioned ^{is} /Martin v. Southern Pacific Co.

2 I.C.C. 1 (1888). I then point out that although that case involved only rates from San Francisco to Denver as applied from San Francisco to Kansas City, the railroad, by implementation of that decision, proceeded to make some revisions in their transcontinental rates other than were informally before the Commission, and the Commission felt disposed to comment on what the railroads had done. And that is referred to in this second proceeding: In Re Tariffs of the Transcontinental Lines. And the Commission commended the carriers for bringing some rates into line with the long and short haul clause, but pointed out that they had not completely succeeded in doing so by any means, and that there were many violations in the new tariffs. And it commented that these violations were partially obscured by the fact that through rates were not published in the same tariffs as the intermediate point rates.

Then I briefly refer to the next case on page 72: Rice v. Atchison, Topeka and Santa Fe Railroad Co., 4 I.C.C. 228 (1890). This is a case in which no violation of section 4 was found; whereas the first case I mentioned was one in which a violation was found.

In this case complaint was made that the rates charged on petroleum and its products from various eastern points to Pacific Coast terminals were lower than to intermediate points. The case was tried on the basis of section 4 only. Rates were 90 cents per hundred pounds from points east of the 97th meridian of longitude to San Francisco and other Pacific Coast terminals. To intermediate points west of the Missouri River the rates increased with distance until they equalled the 90-cent rate

to the Coast plus the local rate back from the Coast. Justification of the lower through rates was sought on the basis of water competition, principally by clipper ships around Cape Horn. The carriers showed that actual competition existed. No violation of section 4 was found.

Now I shall go over to the summary of this period, which is to be found on page 76.

Summary: The above cases, decided between 1887 and 1897, warrant the following general conclusions:

1. The long-and-short-haul clause as enacted in 1887, brought about some readjustments in transcontinental rates which eliminated some instances of higher charges at intermediate points than applied for the longer through distances.

2. Notwithstanding these modifications of the transcontinental rate structure higher rates for shorter than for longer distances continued to characterize the rate structure.

3. The instances in which the Commission considered that higher charges at intermediate points were justified were instances in which real and controlling competition by water carriers was found to exist for the through traffic and not for the traffic at intermediate points.

4. The instances in which the Commission found the rates to be in violation of section 4 were instances in which the water competition alleged to justify the lower through rates was not considered by it to be a controlling force.

THE CHAIRMAN: Q. To go back now to paragraph 1, where you say --- "some readjustments in transcontinental rates which eliminated some instances of

higher charges. . ."; what was done? Were the intermediate charges lowered, or were the long haul charges raised?

A. I could not answer your question without going back to the cases, and even then I am not sure that I could find out.

THE CHAIRMAN: And you do not know, Mr. Frawley?

MR. FRAWLEY: No, sir. This is the research we have done. We could have directed ourselves to that particular point, it being a much earlier stage.

THE CHAIRMAN: All right.

THE WITNESS: I come now to the period from 1897 to 1910, and this is where we get into some legal questions.

B. The Period from 1897 to 1910.

During this period efforts to bring about the removal of seeming long and short haul discrimination in the transcontinental rate structure were blocked by the interpretation placed by the courts upon section 4 of the Act to Regulate Commerce. Three important Supreme Court decisions relating to this matter were Interstate Commerce Commission v. Alabama Midland Railway Co., 168 U.S. 144 (1897); Louisville & Nashville Railroad Co. v. Behlmar, 175 U.S. 648 (1900); East Tennessee Virginia & Georgia Railway Co. v. Interstate Commerce Commission, 181 U.S. 1 (1901).

You will notice that the first one was 1897.

Two points were established by these decisions, as follows: (1) competition of whatever type (not merely competition with carriers not subject to the Act) which existed at the through point and not at the intermediate points created such a dissimilarity of circumstances and conditions that the prohibition of higher

charges for shorter than for longer hauls did not apply; (2) the carriers could in the first instance determine for themselves whether conditions and circumstances were dissimilar or not at the through and intermediate points, and they need not therefore wait for the Commission to grant them relief from the operation of section 4 before charging higher rates at intermediate points than applied at through points where they believed circumstances and conditions to be dissimilar.

It was the view of the Interstate Commerce Commission that this interpretation of section 4 rendered it a nullity. Cases involving long and short haul discrimination in transcontinental rates that came before the Commission between 1897 and 1910 were decided in the setting created by these court decisions and the interpretation placed upon them by the Commission. For statements of the Interstate Commerce Commission setting forth its view that section 4 had been rendered a nullity see *City of Spokane v. Northern Pacific Ry. Co.*, 21 I.C.C. 400, 409 (1911); I.C.C., Annual Report, (1897), p. 42; Administration of the Fourth Section, 87 I.C.C. 565, 564 (1924).

During the period under consideration (1897-1910) there appears to have been but one case involving transcontinental rates in which the Commission found the rates to be in violation of section 4.

You will notice I have some references to substantiate the statement I made that the Commission consider that these decisions had rendered section 4 invalid.

During this period there was only one case involving transcontinental rates which came under section 4, and that is the case referred to next here, but which I shall not take the time to describe.

Q. You mean the case of Kindel v. Atchison, Topeka & Santa Fe Ry. Co. 8 I.C.C. 608 (1900) and 9 I.C.C. 606 (1903)?

A. That is right. There were numerous cases, however, before the Commission involving transcontinental rates.

Coming now to the middle of page 78, I say:

Such relief as intermediate points obtained from discriminating rates during this period came principally from findings that the higher rates at intermediate points were unreasonable per se under section 1 of the Act, rather than from the finding that the rates were in violation of section 4.

I refer to two minor cases and four major cases in which that method of dealing with the situation was used. And I might say that this footnote at the bottom of page 78 explains what section 1 is.

"Section 1 provides that charges shall be 'just and reasonable', and that all 'unjust and unreasonable' charges are unlawful."

THE CHAIRMAN: Have we not a similar rule either in our Railway Act or in any promulgation by the Board?

MR. FRAWLEY: You mean by our Board?

THE CHAIRMAN: Yes.

MR. FRAWLEY: I shall read from section 1 of the Interstate Commerce Act, at subsection 4:

"(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; . . ."

MR. EVANS: What section are you reading?

MR. FRAWLEY: Section 1, subsection 4.

". . . and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through rates with common carriers by water. . ."

Then subsection 6 also is an elaboration of just and reasonable requirements:

"(6) It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to rates, tariffs . . ."

And then, the prohibition, my lord:

". . . and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this part which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful."

MR. FRAWLEY: Are these, generally speaking, the provisions which you have in mind, there, Professor Locklin?

A. Well, yes, I think so.

THE CHAIRMAN: And these provisions are still in the statute?

MR. FRAWLEY: Yes.

THE WITNESS: I think it was stated much more

concisely and simply, originally.

THE CHAIRMAN: I wanted to know if we had anything similar in our Railway Act.

MR. EVANS: Yes, sir. There is section 330. Under that section 330 the standard tariffs must be approved by the Board, and no charge can be made until a standard tariff has been filed and so approved.

Now then, that would be the beginning of the question of reasonableness. And then, under section 325 the Board may disallow any tariff or any portion thereof which it considers to be unjust or unreasonable or contrary to any of the provisions of this Act.

THE CHAIRMAN: That is the way we arrive at it?

MR. EVANS: Yes.

THE CHAIRMAN: Very well.

THE WITNESS: On page 81 I shall read the summary of events of this period.

Summary. It will be seen from the cases described or referred to which occurred in the period from 1897 to 1910, that, with one exception, such reductions in the discrepancies between rates at inter-mountain-territory points and those applying on the longer hauls to the Pacific Coast came largely as a result of findings that the rates at intermediate points were unreasonable in themselves under section 1 of the Act to Regulate Commerce and not as a result of application of the long and short haul clause which had become almost entirely ineffective as a result of judicial interpretation. It will also be observed that discrimination against inter-mountain territory, although somewhat reduced in amount, was not eliminated.

MR. FRAWLEY: Q. Could you give me just an approximate idea of what you call inter-mountain-

territory, and what the area is?

A. That is a term which is generally meant to designate the territory lying between the Rocky Mountains and the Pacific Coast area.

Q. The coastal range and the coast area?

A. Yes.

Q. Now then, section C.

A. C. The Period from 1910 to 1918.

By the Mann-Elkins Act of 1910 Congress amended the long and short haul clause by striking out the qualifying phrase "under substantially similar circumstances and conditions" which, as previously shown, made the prohibition of higher charges for shorter than for longer hauls inapplicable if competition of any type applied at the through points and not at the intermediate points (pp. 77-78 supra.) Under the amended section 4 higher charges for shorter than for longer hauls over the same line, in the same direction, the shorter being included within the longer distance, were prohibited unless the Commission in a proper proceeding had granted relief from the prohibitions of the section. No longer was it possible for the carriers to allege a dissimilarity of conditions and circumstances at the through and intermediate points such as to make the prohibition of the section inapplicable. As Commissioner Lane said: "Congress has taken from the law an embarrassing modification of the prohibition against the higher charge to the intermediate point." 21 I.C.C. 329, 342 (1911). In another place Commissioner Lane said:

". . . Congress intended that the law should say that, as a general rule, there should be no lesser charges to the more distant point, but it was not

willing to say that there should not be some exceptions to this rule. The railroads, however, were not to make these exceptions, themselves. Such exceptions were to be made only upon petition to the Commission upon public justification being shown." (p. 335).

Skipping a paragraph we note that:

It will be seen from the preceding comments that the Commission, after the 1910 amendments to the Act, was in a position to take more effective action in eliminating long and short haul discrimination from the rate structure. We may now turn to a consideration of the application of the revised section 4 to the transcontinental rate structure.

I then proceed to discuss the cases during this period.

(Page 12000 follows)

(Wolff: 00087 - 149)

THE WITNESS: I would like to point out that the next series of cases, of which there were two, i.e., two decisions, each decisions involving two proceedings were important in that the Commission set up a zoning system in order to keep the discrimination against inter-mountain territory from existing on traffic which was not particularly subject to competition or which the discrimination varied somewhat according to the degree of the competition, and I will instance that by reading a little bit on page 83. This case involved a large number of commodity rates from the east to intermediate points as compared with the rates through to the coast. The zoning system is described down here where it says 1, 2, 3 and four:

"(1) On traffic originating on and west of the Missouri River the rates to intermediate points were not to exceed the rates contemporaneously in effect to coast terminals."

That was because it was considered not to be in effective water-competition. That was known as zone 1.

"(2) Traffic originating at Chicago and between Chicago and the Missouri River might move to intermediate points under commodity rates which were 7 per cent higher than were applied on traffic from the same origins to the Pacific Coast." That was known as zone 2.

"(3) From points east of Chicago to and including Pittsburgh." -

That is, on the origin territory ---

"the rates to intermediate points might exceed the rates to the Pacific Coast by 15 per cent."

That was zone 3.

"(4) From New York and Trunk-Line Territory, where water competition was most compelling, the discrimination against intermediate points might be as great as 25 per cent."

Q. In other words, the territory was zoned in accordance with the strength of the water competition?

A. Yes. I might say that on page 84 this case is described a little bit further.

It will be seen from this group of related cases, decided in 1911, that the Commission was taking active steps to reduce long-and-short-haul discrimination on trans-continental rates to such as could be justified by the existence of water competition. Even here, however, the Commission was conservative in its revision of the rate structure, for it allowed some discrimination against inter-mountain territory on traffic originating as far west as Chicago. In so doing the Commission said:

"It is fairly established that the influence of water competition does not cease at the Pittsburgh-Buffalo line, but extends westward as to certain particular commodities, and doubtless for some distance west of Pittsburgh the carriers may properly make rates which will prevent the movement eastward to the seaboard instead of westward over their lines, but we look in vain throughout the records of this Commission for 20 years to find any but the most fragmentary evidence that sea competition extends to Chicago."

Nevertheless, the Commission permitted some discrimination against inter-mountain territory on traffic from Chicago. In authorizing rates from Chicago to intermediate points, the Commission said,

"We desire to be extremely conservative in this the first application of the new law."

The next case I will not read except to point out that the decision in the case I just described was appealed to the courts, and hence the rates were not made effective. It was not until June 13, 1914 that this litigation was terminated by the decision of the Supreme Court of the United States upholding the orders of the Commission, and I have the citation to that decision.

Meanwhile the Panama Canal had been opened, and now the carriers sought a postponement of the Commission's orders requiring a revision of the transcontinental rates; particularly with respect to a list of commodities designated as Schedule C commodities - using the United States pronouncement^{ation} of that word - on which water competition was particularly strong and on which the railroads in this case were seeking further fourth-section relief.

The Commission did modify this zoning order of 1911 to permit a greater amount of discrimination on the commodities listed in Schedule C.

The situation is explained a little further on the next page, so I will read a portion of that; that is page eighty-six.

After this decision of the Commission three groups of commodities existed on which commodity rates were published from eastern origins to the Pacific Coast and to intermediate points, and the extent of fourth-section relief granted to permit lower rates to the Pacific Coast than to intermediate points, differed on each group. As described later by the Commission, Schedule A commodities consisted of commodities "which either are not adapted to water transportation or

which originate in territory so far removed from the Atlantic seaboard as to make their transportation by water unlikely." This list included about 100 items, among which were threshing machines, agricultural implements, vehicles, many furniture items and fragile articles, wheat and flour. On these items rates to the Pacific Coast were not lower than to intermediate points. Schedule B commodities included about 350 items which were somewhat adapted to water transportation. This list was subject to the zoning limitations of 1911, and as I repeat those zoning limitations, I will not repeat them now. This list included certain kinds of agricultural implements, baking powder, bottles, brass and bronze goods, certain mixtures of canned goods, carpets and rugs, clothing, dried fruits and vegetables and numerous other articles. Schedule C commodities, as already indicated, were articles which originated in large volume on or near the Atlantic seaboard and were particularly adapted to water transportation. The list included about 90 items, when shipped in carloads, including certain kinds of canned goods, many iron articles, nails, bolts, nuts, washers, bar iron, sheet iron, structural iron and steel, many paper articles, paints, soap, wire, rope, and telephone wire. On these articles a greater amount of discrimination against inter-mountain territory was permitted than authorized by the zoning orders of 1911.

COMMISSIONER

~~THE~~ ANGUS: Q. To what extent was the Commission preventing the railways from doing something that they would have a financial interest in doing? Would it have been to their advantage to give a lower rate to the Pacific Coast than to the intermediate point?

A. We certainly would think not unless the articles were subject to water competition in reality.

Q. You mean, unless the Commission were mistaken?

A. Yes, that is right.

Q. Was there any possibility that the railways were trying to compete with each other under the guise of competing with water competition?

A. I do not know. I see no indication that that was so, but it might have been.

THE CHAIRMAN: Q. Well, did they have the same rates for the same distances, the different railways, I mean?

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A. Oh, yes, yes; these transcontinental rates would apply over many routes.

Now, down at the bottom of page 87 I point out a new development which occurred.

Owing to the closing of the Panama Canal for several months in 1915 and 1916, and the diversion of steamships from intercoastal service to foreign trade service because of the European war, the inter-mountain territory interests petitioned the Interstate Commerce Commission for a reopening of the various cases in which fourth-section relief had been granted on transcontinental traffic. As a result of this proceeding the Commission found that effective water competition between the two coasts had ceased, and that there was little likelihood that the situation would change in the near future. Since the fourth-section relief granted to the transcontinental rail lines on Schedule C commodities in 1915, and later on certain iron and steel articles, had been based on the intensification of water competition which followed the opening of the Panama Canal, and this competition had now ceased to exist, the Commission rescinded its former grant of additional fourth-section relief on Schedule C commodities and on certain iron and steel articles, and required conformity with the zoning limitations established in the 1911 proceedings.

THE CHAIRMAN:Q.What effect did that decision have on the through rate then? Did it bring it up? This is all a question of percentages. That is the same question I asked earlier, you see.

A. In this case again I could not say. In the next I can show what happened after fourth-section relief was denied.

The next case that I read from or about is Transcontinental Rates, in 1917, referred to at the bottom

of page 88 :

This case was a reopening of all fourth-section applications relating to rates on commodities from eastern defined territories to Pacific Coast ports and intermediate points, and of applications respecting rates on various eastbound products from California to Atlantic ports. The Commission found that "the present service by water between the two coasts of the United States is infrequent, sporadic, and irregular" (p.343), and that there "is no competitive necessity by reason of water service between the two coasts which warrants the rail carriers in maintaining, under present circumstances, lower rates to the Pacific Coast than are normal and reasonable or lower than to intermediate points." (p. 243). All fourth-section relief was withdrawn.

That, then, is the case in which long-and-short-haul discrimination was eliminated from the transcontinental rate structure.

THE CHAIRMAN: Q. By putting the long haul rate up?

A. It is pointed out on the next page, I believe, where the next case is discussed, that---

MR FRAWLEY: Yes, you have it discussed at the top of page 90.

THE WITNESS: Yes, that the carriers complied with that order denying fourth-section relief or raising the terminal rates to the level of the highest intermediate point rates in some instances to slightly more than the intermediate point rates, and those rates became effective on March 15, 1918.

THE CHAIRMAN: Later on, not today, we may discuss whether or not such a remedy would be satisfactory to you, Mr. Frawley.

MR FRAWLEY: We may discuss it, yes, sir.

THE CHAIRMAN: Whether the remedy of putting the long haul rate up would be a satisfactory solution for you to this discrimination.

MR FRAWLEY: Well, it would remove the discrimination.

THE CHAIRMAN: Yes, it would.

MR FRAWLEY: It would remove the discrimination, but that is not the plan I have in mind. I have in mind that the carriers should be permitted to violate the fourth section.

THE CHAIRMAN: Never mind arguing it now. I am just pointing out as we go by that here we have a case in point where the discrimination was removed by putting the terminal rate up.

MR FRAWLEY: In studying this evolvement that is very important to note, sir, no doubt about that. Historically it is important.

COMMISSIONER INNIS: Q. None of these intermediate point rates were lowered?

THE CHAIRMAN: Apparently not.

THE WITNESS: I beg your pardon?

COMMISSIONER INNIS: A. None of these intermediate point rates were lowered?

A. I think not, by what was said here.

MR EVANS: In order to keep the record clear, there was one case. The paragraph just read indicates that the rates at the terminal points were slightly more than at the intermediate points. I do not know whether this is what you had in mind.

THE WITNESS: Yes, as a result of the change.

I would like to go back to this case on page 89 a little bit further to comment on it.

MR FRAWLEY: Q. Yes, you were on 89 when you

went over to page 90.

A. Near the top of page 89:

The Commission recognized that water competition would undoubtedly become effective again at a later date, and that fourth-section relief might again become appropriate. Anticipating this situation, the Commission said:

"We are of the opinion that the best interests of the public of the transcontinental carriers, and of these inter-mountain cities in particular, will be secured by a policy that permits the transcontinental carriers to share with the water lines in the traffic to and from the Pacific coast ports."

The Commission cautioned, however, that any lower rates to the ports, when they became necessary, "must not be lower than the competition of the boats makes necessary, and must be high enough to cover, and that by a safe margin, actual out-of-pocket costs of securing and handling the traffic." (p. 268). In view of the fact that effective water competition was now absent the Commission required a readjustment of rates in conformity with the long-and-short-haul clause. Commissioner Harlan dissented on the grounds that the absence of effective water competition through the Panama Canal was temporary, and that the transcontinental rates should not be disturbed as a result of such a temporary condition.

This case is of interest in three important respects. (1) The Commission required, for the first time, that all transcontinental rates be brought into conformity with the long-and-short-haul clause; (2) the decision was based on the absence of controlling water competition, a situation admitted to be temporary in character; (3) the report indicated the belief of the Commission that if and

when water competition should again become effective, fourth-section relief to enable the railroads to lower their rates to and from the Pacific Coast terminals without reducing them at intermediate points in inter-mountain territory might again be justified.

Then I summarize the cases in this period. I think, since I have been over these particular cases, it will not be necessary to read that summary..

Then we come to the period from 1918 to 1932.

MR FRAWLEY: Might I interrupt you, Professor Locklin? I just want to put into the record, before we get too far away from it, the fourth section as it was in 1887, because my friend Mr. Evans requested it. I take it that Mr. Evans does not particularly wish me to read it all, but I would hand it to the reporter and have it written into today's transcript at this place.

MR EVANS: Mr. Frawley, if it would not be too long, you might read the words that are left out there.

MR FRAWLEY: It is more than half of it, but, as it will only take a minute or so, perhaps I had better read it from the beginning:

"SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for

a longer distance: Provided, however, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act."

Q. Now we come to section D, on page 91.

A. I will read the first paragraph:

This period is characterized by one attempt to get lower rates from the east to points in inter-mountain territory than applied to the coast, and several attempts of the railroads to re-introduce fourth-section departures into the transcontinental rate structure.

I think it will be unnecessary to comment on the first case, which was the unsuccessful attempt to get the rates graded according to distance, giving inter-mountain territory lower rates than applied to the coast.

The next case, referred to on page 92, is a very significant case, so I will read a portion of this account:

The return of water lines to intercoastal service in 1921 led the rail carriers to file an application with the Commission for fourth-section relief on transcontinental traffic. It will be recalled that the denial of fourth-section relief in Transcontinental Rates, 46 I.C.C. 236, in 1917, was based on the discontinuance of water transportation via the Panama Canal, but that the Commission intimated that if water transportation should again become a reality, it would be appropriate for the

railroads to seek fourth-section relief once more. Water transportation through the Panama Canal had now been restored, and the Commission admitted that the competition was keener and the water service more efficient than at any time before the war.

The rail carriers proposed to reduce the rates from eastern points to the Pacific Coast without reducing rates at intermediate points. The railroads did not propose to reduce the rates sufficiently to divert much of any traffic originating at the Atlantic ports. From interior points, however, they proposed rates to the Pacific Coast which would approximate the rail rates from those points to Atlantic ports plus the water rates via the Panama Canal. For instance, the dollar rate proposed on iron and steel was 5 cents more than the rail rate of 35 cents from Pittsburgh to Baltimore plus the water rate from Baltimore to the Pacific Coast of 60 cents. The differential represented the superiority of the rail service. Rates so arrived at were to be blanketed at all origins east of the point on which the rate was based, and also were to be blanketed westward and apply from all origins as far west as the Rocky Mountains.

The Transportation Act of 1920 had amended section 4 of the Interstate Commerce Act by adding a requirement that the Commission, in granting relief from section 4, should "not permit the establishment of any charge to or from the more distant point that was not reasonably compensatory for the service performed." The Commission in this case discussed the amendment of section 4 and formulated a definition of the phrase "reasonably compensatory". For a rate to be "reasonably compensatory", said the Commission, it "must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to

which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers;..."

THE CHAIRMAN: That seems to give some sort of answer to the question I put the other day, as to what is meant by meeting competition.

MR FRAWLEY: Yes, it does, sir.

THE WITNESS: And (4) not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the act." (p. 71).

Now, in a footnote I explain what section 15a is, which required the Commission in prescribing rates to prescribe rates to enable the carriers as a whole, or as a whole in rate groups, to earn a fair return on the aggregate value of their property.

I want to comment on the next paragraph, or read it:

The rates proposed by the carriers in this case satisfied all of the foregoing criteria of "reasonably compensatory" except the last. The last condition is somewhat vague, but in the case at hand the failure of the carriers to satisfy this condition was based on the fact that collateral losses of revenue by the carriers would exceed the gains from the additional traffic carried. The Commission went to considerable length to show that since half the traffic covered by these applications was moving by rail at the higher rates, the loss of revenue by carrying this traffic at reduced rates would more than offset the gain from additional traffic which might be diverted from the water carriers.

Then I point out that there were some other factors in that decision denying fourth-section relief.

The influence of section 500 of the Transportation Act of 1920, which imposed some obligation on the Commission to foster and preserve both rail and water transportation, and also the influence of section 3, the difficulty there being largely because of the extreme blanketing of the origin points, which was alleged to prefer middle-west origins over origins further east.

Now, there were some exceptions in this denial of fourth-section relief. They ought to be noted, I think. They are referred to at the top of page 95:

The first exception related to rates over the Southern Pacific's rail-water "Sunset -Gulf route".

That is a route on the Pacific Coast to the Gulf ports, and then by the steamship company controlled by the Southern Pacific to New York.

MR EVANS: Q. That is the Gulf of Mexico ports?

A. Yes.

The Southern Pacific was granted authority to maintain over this route, eastbound rates on asphalt, beans, canned goods, dried fruits and rice from California terminals to New York City only, while maintaining higher rates to, from, and between intermediate points.

Notice the reason for the exception, referred to here:

In making this exception to the general denial of fourth-section relief the Commission said: "The prejudice found by us to exist by reason of the wide blanketing of rates under the general westbound application is not here present. The collateral loss of rail revenue there involved is here negligible. We find that the rates proposed and the resulting charges will be reasonably compensatory."

The second exception to the general denial of fourth-section relief was on sulphur from Louisiana and

Texas mines to California and north Pacific Coast terminals.

It seems a little peculiar to call those trans-continental rates, but they are so called.

A rate of 55 cents to California terminals and 65 cents to North Pacific Coast terminals was authorized to meet rail-water rates via the Gulf ports and the Panama Canal while higher rates were maintained to intermediate points. The Commission found that the proposed rates were reasonably compensatory and that collateral loss of revenue from the traffic hitherto moved by rail to the Gulf ports, was slight. (pp. 76-79). In a later case, however, the Commission denied an application to reduce the terminal rates by an additional 15 cents, holding that the lower rates were not shown to be "reasonably compensatory".

Then I skip over to page 96 and note the next case, Commodity Rates to Pacific Coast Terminals. You will see what happened when the Commission denied fourth-section relief in the 1922 cases. I will just read the first sentence or so:

Following the decision of the Commission denying fourth-section relief in Transcontinental Cases of 1922, (74 I.C.C. 48), the rail carriers published the proposed reduced rates to the Pacific Coast terminals on many articles -- it does not say all, but many -- but, as was necessary because of the denial of fourth-section relief, observed them as maxima at intermediate points -- in other words, blanketed back the rates, as we commonly say. On certain articles, rates slightly higher than the proposed terminal rates were published and also blanketed back to intermediate points.

Then the case that is really described here was the second attempt of the carriers to restore long-and-

short-haul departures on transcontinental rates, but was a somewhat more limited or restricted application, but it was also denied, with three Commissioners dissenting.

(Page 12020 follows)

MR. FRAWLEY: You note that at the bottom of page 97?

A. Yes sir. There was a further attempt described on page 98 of the Southern Pacific to grant some additional fourth-section relief on additional commodities over this route.

THE CHAIRMAN: On page 97 I see the second paragraph there: "The Commission found that the proposed rates would more than cover the out-of-pocket costs of transporting the commodities by rail, and that with the exception of the rates proposed on ammunition they were not lower than necessary to meet competition. The Commission, however, denied relief".

MR. FRAWLEY: Well, Professor Locklin discusses that in the next paragraph, which was not read. If you would read the very following paragraph.

A. Refusal of the Commission to grant relief in this case seems to have been based on a number of considerations. Among these were doubts as to the additional traffic that would be diverted to the rail lines by the proposed reductions, particularly in view of the fact that the water lines and Eastern railroads might make corresponding reductions in the rail-water rates from Eastern manufacturing points. That is, the Eastern railroads in this case were not with the Western railroads. The Eastern railroads preferred to carry the traffic East to the ports for water transportation. "We should be convinced" said the Commission, "that the adjustment proposed will result in the substantial benefits which its proponents anticipate." The loss of revenues to the Eastern railroads, if the Western railroads succeeded in diverting traffic, was noted; and mention was made of the Congressional Declaration of Policy in Section 500 of the Transportation Act of 1920 which declares it to be the policy of Congress "to promote, encourage, and develop water transportation, service,

and facilities and to foster and preserve in full vigour both rail and water transportation." The Commission also suggested, as in Transcontinental Cases of 1922, that the reduction of rates from Middle-West Points might also create violations of Section 3 of the Act by creating undue preference and prejudice. Again meaning that it was giving middle-western points lower rates than their geographic location might possibly entitle them to.

COMMISSIONER ANGUS: If we may go back for one moment to page 96, when you tell us that the rail carriers publish the proposed reduced rates, does that mean that the rail carriers put into effect rates that the Interstate Commerce Commission had found were not compensatory?

A. Well, I would assume that that was so if they reduced them as low as they had originally proposed and of that I am not sure.

Q. Is not that what we are to understand from this, that the carriers published the proposed rates? Does that mean the rates originally proposed?

A. That would seem to be such.

THE CHAIRMAN: Those proposed rates are dealt with on the next page, I think "That they would more than cover the out-of-pocket costs of transporting the commodities by rail ..".

A. Yes, that is correct, sir. They more than cover the out-of-pocket expenses.

Q. In that case you would say they were compensatory?

A. Well, you see, they did not apparently conform to all the criteria of reasonably compensatory -- probably the last point about collateral loss of revenue but so far as their being compensatory in the sense of covering out-of-pocket expenses, they were compensatory.

MR. FRAWLEY: You see, the note says at the top of page 96

"The Commission said that it was extremely doubtful

that there could be much, if any, profit over and above out-of-pocket costs in the proposed rates".

THE CHAIRMAN: Of course the loss of revenues to the Eastern railroads if the Western railroads succeeded in diverting the traffic?

A. Yes.

Q. Because there it is different railroads and groups of railroads?

MR. FRAWLEY: Over there, and that is not so here. That is quite right, sir.

THE WITNESS: I think I can now turn to the summary of this period on page 99. This period is characterized by the following developments:

(1) The railroads were unsuccessful in several attempts to restore long-and-short-haul departures in the transcontinental rate structure.

(2) An effort on the part of inter-mountain territory to obtain lower commodity rates from the East than applied from the same origins to the Pacific Coast Ports was unsuccessful.

(3) The refusal of the Commission to grant fourth-section relief to the transcontinental rail carriers as mentioned in paragraph (1) above, was influenced by the following considerations:

- a. failure of the carriers in some instances to prove that the reduced through rates would be reasonably compensatory for the service performed;
- b. failure of the carriers to demonstrate in some instances that they would gain additional revenues by the reductions;
- c. the fact that the rate structure proposed in some of the cases would possibly create violations of Section 3 of the Act which prohibits undue preference and prejudice;

- d. the influence of Section 500 of the Transportation Act of 1920 which declares it to be the policy of Congress to preserve both rail and water transportation "in full vigour".

Then the fourth conclusion of this period:

(4) There were a few minor exceptions to the general denial of fourth-section relief. These were as follows: sulphur from Louisiana and Texas Mines, to California and North Pacific terminals; asphalt, beans, canned goods, dried fruits and rice when moving Eastbound from California terminals to New York City only, and only over the rail-water route of the Southern Pacific known as the Sunset-Gulf Route.

MR. FRAWLEY: Now then, you come to the last period, the period from 1932 to date. Will you just discuss that?

A. I will read this first paragraph of it. The attempt of the transcontinental railroads to obtain fourth-section relief in 1926 on a large number of commodities moving between Eastern points and the Pacific Coast, and the later attempt of the Southern Pacific to obtain fourth-section relief for its Sunset-Gulf Route, were the last attempts to re-introduce fourth-section departures in the transcontinental rate structure on a large scale. The way is open, however, for the railroads to seek fourth-section relief again at any time that they so desire and feel that they can make the required showing before the Commission that is necessary. Since 1932 there have been a few fourth-section applications involving transcontinental rates, but each has involved but a single commodity or closely related commodities. In one of these cases fourth-section relief was denied; in the others it was granted. And I described each of those cases at pages 100 to the top of page 104 and the summary of this period is as follows:

The fourth-section cases involving transcontinental rates

which have been decided since 1932 have each involved a specific commodity or closely related commodities. I should say, I guess, a group of closely related commodities. In one case fourth-section relief was denied on autos; in three cases limited relief was granted on sugar, soya-bean meal, and canned pineapple.

In the case in which the Commission denied relief the denial was based in part on the doubtful compensatory character of the proposed through rates, and in part on the failure of the railroads to show that they would be likely to gain additional net revenues from the proposed reduction in the through rate.

In the cases in which fourth-section relief was granted the Commission was satisfied of the compensatory character of the proposed rates, and also that the railroads could reasonably be expected to gain from the proposed reductions which were designed to meet effective water competition or market competition.

Now, the next is a general summary. I don't know whether it is necessary to read that or not. It is a summary, and is in detail the same as these separate summaries.

Q. I think it would be helpful if you would read it, Professor Locklin.

A. All right, on page 104: The history of the transformation of the transcontinental rate structure from one which was characterized by higher rates on a vast scale to and from inter-mountain territory than applied to and from the Pacific Coast to one which conformed to the long-and-short-haul clause of the Interstate Commerce Act, with only a few minor exceptions authorized by the Commission, has been related in the preceding pages. This summary may to advantage be divided into two parts: first, a summary of the facts with respect to the modification of the rate structure; and

second, a summary of the policies observed by the Interstate Commerce Commission in dealing with these cases.

So far as the facts about the modification of the rate structure are concerned, the previous discussion may be summarized as follows:

(1) Some modification of the transcontinental rate structure in the direction of eliminating or modifying some instances of discrimination against inter-mountain territory took place in the period between 1887 and 1897 as a result of Commission decisions and of efforts of the railroads to comply with the Act to Regulate Commerce.

(2) In the period from 1897 to 1910 judicial interpretation had rendered the long-and-short-haul clause largely ineffective, and such modification of the transcontinental rate structure in the direction of reducing discrimination against intermediate points came, for the most part, as a result of findings of the Commission that rates at intermediate points were unreasonably per se under section 1 of the Act, rather than that they violated section 4.

(3) Between 1910 and 1918 transcontinental rates were finally brought into conformity with the requirements of the long-and-short-haul clause as a result of a series of decisions of the Commission under section 4 as revived and strengthened by Congress in 1910.

(4) Between 1918 and 1932 several attempts of the transcontinental railroads to restore long-and-short-haul departures on a comprehensive scale in the transcontinental rate structure were unsuccessful. A few minor departures from the prohibitions of the long-and-short-haul clause, however, were authorized by the Commission.

(5) Since 1932 there have been no attempts by the

railroads to obtain fourth-section relief on a large scale on transcontinental traffic. There have been a few instances in which the railroads have applied for fourth-section relief on a single commodity or group of closely related commodities moving as transcontinental traffic. In three of these instances limited relief was granted; in one, relief was denied.

(6) The transcontinental rate structure today is in general conformity with the provisions of section 4 which prohibit higher charges for shorter than for longer hauls over the same line, and in the same direction, the shorter being included within the longer distance. The few exceptions authorized by the Commission are as noted in earlier pages.

(7) The way remains open for the railroads to obtain fourth-section relief on transcontinental traffic at any time that they believe that it is in their interest to do so, provided adequate justification of their proposals can be shown.

We may now turn to a summary of the principles observed by the Commission in fourth-section cases. Attention has been directed to these principles in the discussion of the transcontinental fourth-section cases which have been reviewed in the earlier part of this statement. These principles, it should be pointed out, are no different than the principles observed by the Commission in other fourth-section cases. It is true that certain issues have arisen in some of the transcontinental fourth-section cases that do not arise in most fourth-section cases, but it cannot be said that the Commission has adopted any different principles or policies in transcontinental cases than in other fourth-section cases.

These principles may be summarized as follows: In order to obtain relief from the prohibitions of section 4 to charge a higher rate for a shorter than for a longer haul over the same line, in the same direction, the shorter being included in the longer distance, a carrier must show:

(1) That the reduced through rate is less than normal over its line or route and is compelled by conditions beyond its control, normally by competition of some sort;

(2) That the reduced rate covers and more than covers the extra or additional expense incurred in handling the traffic to which it applies;

(3) That the reduced through rate is no lower than necessary to meet the competition encountered and is not so low as to threaten the extinction of legitimate competition;

(4) That the competition alleged to justify the reduced through rate is actual and not merely potential;

(5) That there is reasonable prospect that the carrier will gain by the reduced rates, i.e. that additional revenues derived from the added traffic will not be offset by collateral losses of revenue; and

(6) That the rates at intermediate points are reasonable in themselves under section 1 of the Act.

Although the application of these principles to a particular state of facts is not always free from difficulty, it is clear that they are designed to prevent departures from the long-and-short-haul clause that are not justified, but at the same time to permit relief from the prohibitions of the section when such relief is justified.

MR. FRAWLEY: Now, you have a final section in your part of the brief called "The Present Status of the Transcontinental Rate Adjustment" and I think you might probably just read that into the record. Perhaps it is the shortest way to come to the point.

A: It is called "The Present Status of the Transcontinental Rate Adjustment".

As previously noted, the rail carriers may at any time apply for fourth-section relief on transcontinental traffic. If they should do so it is safe to predict that the Interstate Commerce Commission will decide the case in conformity with the general principles outlined above which have been evolved over a period of years in deciding thousands of applications under the fourth section.

Certain developments which have occurred during and after World War II have a bearing on possible adjustments of transcontinental rail rates in the future. In 1946 the Commission instituted an investigation of transcontinental rail rates and intercoastal steamship rates. Dockets 29663 and 29664. These investigations were undertaken as a result of a petition filed by the United States Maritime Commission and the War Shipping Administration which alleged that successful and profitable operation of domestic shipping services was not possible unless increases were made in competitive rail rates. The difficulty of the intercoastal carriers seems to be that increases in operating costs make it impossible for them to operate profitably without increases in rates. Water rates cannot be increased, however, if rail rates which were established to meet water competition when steamship costs and rates were much lower, are to

remain at their old levels. Although this proceeding is still on, the Commission's docket, the Commission permitted the rail carriers in 1947 to increase the transcontinental rates which were in effect on June 30, 1946, by 25%, instead of by the 20% which had been authorized as a general rate increase in Ex Parte 162, 266, I.C.C. 567. See Transcontinental Rail Rates, 268 I.C.C. 567 (1947)

(Page 12034 follows)

In so doing the Commission commented on the very great increases in operating costs that the steamship lines had incurred. The Commission then said: " For this reason it appears that competition from the intercoastal ships will probably have much less effect on transcontinental rail rates than it has in the past." (pp. 572-573). The difficulties of the water carriers were also pointed out by the Commission in its Annual Report for 1948. The Commission said:

"In the coastwise and intercoastal trades, the steamship companies which took over the operations discontinued by the Maritime Commission on July 1, 1947, made little progress toward the revival of their pre-war operations." (p. 47). The Commission pointed out that intercoastal services had been curtailed, and that one of the intercoastal common carriers had suspended its services in that trade. (p. 47). It noted that approximately 60 vessels were now being operated on round voyages in common-carrier intercoastal service, which was about one-third the number in such service before the war. (p. 48). In another place in its report, the Commission, after pointing out the problems facing the water carriers, said: "Changed conditions make it necessary to add, in frankness, that in some respects the prewar pattern of operations may be beyond restoration." (p. 6). In discussing the relation between rail and water rates the Commission said:

"Water transportation has always had some influence on rail rate structures. In recent decades, its lower costs have forced many downward adjustments of rail rates, particularly in transcontinental and certain coastwise rates. . .

Recent large increases in water-carrier costs, coupled with the difficulties experienced by some branches of the industry in restoring services interrupted by the war, have caused reversal of the competitive position of water and rail carriers."

The Commission then went on to point out that water carriers claimed that many rail rates, even as recently increased, were depressed, and that the water carriers could not compete with the railroads on a profitable basis unless the water lines are permitted to make considerable increases in their rates, but that they cannot do so and obtain or retain traffic "unless there be a widening, or at least no lessening of the differentials between rail and water rates on the commodities which afford the principal and most attractive tonnage for the water lines." (p. 52). This is one of the issues in Dockets 29663 and 29664. What the outcome of these proceedings will be, the future will determine. It seems clear, however, that intercoastal steamship competition is a much less potent influence in compelling low transcontinental rail rates than it was for many years prior to World War II. This condition of affairs may not continue forever but under the present law the rail carriers are in a position to seek fourth-section relief on transcontinental traffic if water competition should again become sufficiently strong.

MR. FRAWLEY: That is fine. Thank you, Professor Locklin. And if you will stand down now, I shall put Mr. Harries back into the box for cross-examination. But before cross-examination I want to deal very briefly by way of answering a few excerpts from the Canadian Pacific brief, and then, of course,

Part IV is to go in, I presume, and that should be done. There are two pages, before Mr. Harries says anything else.

---(The witness retired.)

MR. HU HARRIES, recalled.

EXAMINATION BY MR. FRAWLEY continued

MR. FRAWLEY: Q. Mr. Harries, I think you had better complete the brief by putting Part IV, "Conclusions and Recommendations" into the record.

A. "Part IV - Conclusions and Recommendations."

Parts I and II of this brief have outlined the history of long and short haul discrimination in Canada. An examination and analysis has been made of the relevant sections of the Railway Act, the judgments of the Board of Transport Commissioners, the attitude of the railroads and the effect of long and short haul discrimination upon intermediate points. It is our submission that in the matter of long and short haul discrimination the practice which has been followed, in dealing with this particular type of discrimination is most unsatisfactory. Deficiencies in the Railway Act and the lack of concise and logical administrative rules established by the regulatory body combine to produce this unsatisfactory condition.

Section 314, subsection 5, of the Railway Act prohibits the practice of long and short haul discrimination unless the Board is satisfied that it is expedient to allow it. It is our submission that this manner of dealing with what is universally recognized as one of the most difficult rate regulation problems leaves much to be desired. We believe that the statute which charges an administrative body with duties as onerous as those of regulating railroad transportation should state the policy of the Administration in

unmistakably clear language.

THE CHAIRMAN: Q. What do you mean by "the policy of the administration"?

A. The Government, sir.

Q. Have you got an amendment to the Act?

MR. FRAWLEY: Yes, sir. We gave you an amendment.

THE CHAIRMAN: Oh, that is all you need. All right. You said "policy of the administration". What you mean is: The policy of Parliament?

MR. FRAWLEY: "Parliament" is the right word, sir.

THE WITNESS: It is not sufficient to leave wide areas of control in the hands of the appointed tribunal.

In our submission the judgments of the Board of Transport Commissioners in the matter of long and short haul discrimination, do not seem to be consistent. No well-defined policy has been established as to when long and short haul discrimination is justifiable and when it is not. In addition long and short haul departures are permitted without investigation.

It would appear that the net effect of leaving such an important phase of policy in the hands of the tribunal has been to permit dissimilar treatment under similar conditions. It would also appear that when the tribunal takes a negative attitude in the matter of such policy the effective determination of these matters in fact passes into the hands of the carriers. In our submission none of these things are desirable.

In Part III of the brief, we detail the administrative and statutory history of the long and short haul rule in the United States. In that country a solution

has been devised which effectively prevents long and short haul discrimination where it cannot be clearly justified, but which permits it where such justification is definitely established.

In our submission the manner in which this problem has been solved in the United States can be adapted to the needs of the situation in Canada. We submit that this Commission should recommend that long and short haul discrimination in Canada be prohibited subject to the provision that the Board upon formal application of the carrier seeking to practice long and short haul discrimination, after hearing may allow such discrimination provided that the carrier satisfies the Board that --

MR. FRAWLEY: I do not think you need to read that, because it is precisely what is in the statute which we have offered to the Commission. Now, will you take Part I of the Canadian Pacific brief. I want to run through it briefly and ask you for your comment on some of the things they have said about us.

COMMISSIONER INNIS: Q. Before this examination proceeds further, could you say as to the views of Alberta with respect to section(d) on page 99, as to whether it would be the view of Mr. Harries that a similar policy should be recognized in Canada, namely, one which preserves both rail and water transportation in full vigor?

A. I am afraid, sir, I could not say what the policy of the Government is in that matter.

Q. Well, I was anxious to find out whether you rather favour the building up of water transportation via the Panama Canal, or whether you feel it would be better if that were --

A. My general view as to competition between water carriers is that one carrier which may have a sort of alternate source of revenue from a projected market or for some other reason should not be permitted to make low rates which do not cover the total costs, in an effort to meet competition by another carrier who depends on that traffic for his earnings.

THE CHAIRMAN: Q. But there you are particularizing. I think the point is this: That the Congress of the United States has declared that it is its policy to preserve both rail and water transportation in full vigor and that everybody must be guided by it. Would you favour a similar declaration by the Parliament of Canada that not only rail but water transportation should be preserved in full vigor?

A. I think, personally, sir, that I would be in favour of a recommendation along those lines.

Q. But is the Province of Alberta in favour of it?

MR. FRAWLEY: The Province of Alberta has not given that particular matter sufficient attention to warrant me in making any observation. My view would be that the rate must be fixed; the rate to operate must be fixed in compliance with the competition as it is strong or weak; and then, whatever they are, the proper application of long and short haul principles. Thus the rates should be spread back. I am indifferent as to that, and quite naturally so. I am indifferent as to whether it should be the policy of Parliament, and I submit, with respect, that I should not be called upon to make any observations about it. Parliament probably has a policy now and it is evident in the Transport Act. To be perfectly frank, I think your question is perfectly well put, of course, but I

have no instructions about it. It is a Federal matter and one which does not concern the Province of Alberta today too much.

COMMISSIONER INNIS: However active competition may become via the Panama Canal?

MR. FRAWLEY: Then, if the principles which I suggest are strictly adhered to, I would be content, whatever flows from the proper application of the better rule.

Q. Would you look at page 91 of Part I of the Canadian Pacific brief where it reads, about two-thirds of the way down:

"In that case, the matter of the transcontinental rates was reviewed at great length."

And the case which is referred to is the General Freight Rates Investigation, of 1927. Now, have you taken the pains to examine the judgment of the various Commissioners in the General Freight Rates Investigation case, to find out whether or not the language of the Canadian Pacific is or is not just a little too all-embracing?

A. I find, after looking at the judgment, that Mr. McKeown, the Chief Commissioner, devoted three paragraphs to it, which have been quoted both by us and by the Canadian Pacific. Mr. McLean merely noted that he agreed with Mr. McKeown. Mr. Vien does not mention it. Mr. Boyce says he agrees with Mr. McKeown. And Mr. Oliver does not mention it.

Q. Now, turn to page 93, where you will find this statement:

"The railways in making these increases endeavoured to provide, generally, for the same basis of rates as in effect between New York, N.Y., and Seattle, Washington."

A. I would suggest that this indicates that there is a considerable element of market competition in these transcontinental rates. And I would also suggest --

THE CHAIRMAN: Q. What is your first comment?

A. I suggest there is a considerable element of market competition in these rates.

Q. What do you mean by "market competition"?

A. Well, that these rates are set, having in mind the fact that the consumer in British Columbia, for example, may order his supplies from Eastern Canada or from the Eastern United States.

Q. You mean, competition to the carriers to get to a market?

A. Competition.

Q. Competition among whom?

A. Among the people who supply the carriers with business.

Q. To get to the markets?

A. To get to the markets, yes, sir.

Q. From different regions?

A. Yes, sir.

COMMISSIONER INNIS: Q. Do you think that the dependence on two main line railways rather restricts the possibility of market competition developing, and that water competition is quite an important factor?

A. It certainly restricts market competition which can develop in Canada. I mean, if there were a number of other railways, you would have much more market competition. But having in mind the competition which can develop from alternate sources of supply in the United States -- and that is, one would gather, particularly important at the coast. One would gather

then that probably there is a rather important element of market competition.

MR. FRAWLEY: Q. At page 93 of Part I of the Canadian Pacific brief, the attention of the Commission is called to a statement which appears at pages 81 and 83 of the appendix to Part I, called a statement of competitive rates and earnings on commodities of which there is a regular movement from British Columbia points to destination; and on the following page, page 82, there is a similar statement with respect to competitive rates and earnings. What is your comment on those tables and what they attempt to say, in so far as your submission to the Commission is concerned?

A. In our submission we have not attempted to deal with the matter whether a particular rate is or is not compensatory. What we are attempting to bring before the Commission is the problem. We are suggesting that a principle which does, in fact, among other things, ask that rates be made compensatory, is as far as we are going to go now. We are not trying to show whether a rate is or is not compensatory. We want to have the principle established what a rate should be; and we think the particular matter of whether it is or is not compensatory is something to be handled by the Board of Transport Commissioners.

THE CHAIRMAN: Would you be satisfied if the Board of Transport Commissioners applied the same considerations in solving that question as they have been applied in the United States by the Interstate Commerce Commission?

A. Yes, sir, we would.

Q. The things we have heard in this brief today?

A. Yes, sir.

THE CHAIRMAN: I think that is very important, that last statement.

MR. FRAWLEY: That is true. That is why we brought Professor Locklin here.

THE CHAIRMAN: My question was whether the witness talked about rates being compensatory, reasonably compensatory, I think he said. I wanted to know, in determining such a question, whether he thought our Board should be guided by the same considerations as have been adopted by the Interstate Commerce Commission in the United States. And Mr. Frawley said yes.

MR. FRAWLEY: Yes.

Q. Now, at page 118 of Part I of the Canadian Pacific brief, the statement is made -- oh I beg your pardon, I should have said page 118 of Part II, the statement is made:

"The only real difference between what Alberta advocates and what is now the law in Canada with certain minor exceptions to which attention will be drawn, is that a prior application must be made to the Interstate Commerce Commission for what is called fourth section relief."

What have you to say about that?

A. I would say that we do not agree with that statement because, in the United States there are five tests which the Commission applies in each and every case, and they must meet each one of these tests.

In Canada, although there may have been implicit attention paid to one or other, or in an instance of which I am not aware, all of them, it is not a condition of being granted. It is rather for the carrier to prove

each one of these particular things. So I do not think it is reasonable to say that the only real difference between what Alberta advocates is related simply to whether application is made prior, or after, or at all.

Q. Will you go now to page 119, still of Part II, where this statement appears:

" . . . the attention of your Commission is drawn to the schedule of rates . . . "

Will you go to that statement on page 119 of Part II which reads:

"Moreover, there are not today any instances in which the sum of the rates from Eastern Canada to Vancouver and from Vancouver to Calgary is lower than the rate from Eastern Canada to Calgary."

What have you to say about that?

A. I think this indicates how quickly the situation can change. As far as I am aware, that statement was correct when the Canadian Pacific filed its brief. However, today, as we pointed out this morning, there are cases, and one of them is canned goods, where you can now do exactly what the Canadian Pacific say you cannot do, or could not do at the time they wrote their brief.

THE CHAIRMAN: Q. By reason of what?

A. The actual reason is because on October 11 they increased their standard rates 8 per cent, but did not increase their competitive rates. So that threw it all out of line again. The business men of Alberta certainly appreciate the change that they get in a rate which is not greater than the sum of the rate to Vancouver and back from Vancouver to their place of business.

MR. FRAWLEY: I would like to have that noted

by the Commission. The Canadian Pacific calls attention to the happy position in which we were, when they wrote their brief, and that now the people in Alberta do not pay any more/^{than}enough to take the goods to Vancouver past our door and back to our door in Calgary. That is considered to be a happy state of affairs.

THE WITNESS: On that same page there is another thing. At the top of the page the Canadian Pacific draw the attention of the Commission to a schedule of rates filed by Alberta. And I presume that is Exhibit 137, which was filed this morning.

MR. FRAWLEY: Q. Yes.

A. They note that the rates included in the schedule do not reflect the increases made in competitive rates, made on the 15th of September, and so on. Now, we had to stop somewhere, the number of man-hours of work involved in revising the brief would have been so great, when you consider that we only had two men. It would have made it out of the question.

MR. FRAWLEY: I think we should be excused for it not being up to date when we came in, because we find that they themselves were not up to date when they came in.

MR. EVANS: There is no odium in that.

MR. FRAWLEY: Perhaps you are a little too sensitive. You touch us under the long and short haul clause, and touch us deeply.

MR. FRAWLEY: Q. I think there are some other comments you had to make in connection with the Canadian Pacific brief. But probably now you should go on and be cross-examined by my friends, unless there is something else which you want to put into the record

at this time.

A. There is just one point we would like to draw to the attention of the Commission, and that is at page 120 of Part II of the Canadian Pacific submission, where they make the statement that Alberta has overlooked the fact that potential as well as active competition is recognized by the Interstate Commerce Commission; and then two decisions of the Interstate Commerce Commission are cited in support of the statement.

We would like to say that the Canadian Pacific Railway has overlooked the fact that section 4 of the Interstate Commerce Act specifically provides that authorization to depart from the requirements of the section shall not be granted "on account of merely potential water competition not actually in existence."

The two cases cited by the Canadian Pacific Railway Company show that the Interstate Commerce Commission considers that competition is actually in existence and not merely "potential", even though no competitive movement has occurred. The following excerpts from three of the Commission's decisions, including the two cited by the Canadian Pacific Railway Company, will establish this point.

The first case is:

"In Rags and Paper to Newark, N.Y., 208 I.C.C. 327 (1935)".

In that case at page 327 the Commission said:

"In determining whether the competition by water is actual or is merely potential, 'not actually in existence', the fact that there has been no movement by water is significant but not controlling. . . The essential elements of

competition are all present when a going water carrier has made a bona fide offer to perform a competitive service and is ready, willing and able to carry the traffic if the offer is accepted, especially if every facility for the performance of that service is at hand. Nothing in the statute indicates that an actual movement of the particular commodity by water is necessary to establish the existence of water competition. Such movement or absence of movement only shows whether or not the water carrier was successful in obtaining traffic for which it was competing. (p. 330)."

And then, in "Fuel and Gas Oil to Memphis, Tenn., 218 I.C.C. 106 (1936)". At page 106, the Commission said: --

THE CHAIRMAN: In the same volume?

A. No. The other was Volume 208. This is Volume 218.

Q. What page?

A. Page 106, sir, where the Commission said: --

MR. FRAWLEY: Q. You are reading from page 110.

A. And in the other one we read from page 330.

The Commission said:

"The record establishes that the existence of adequate and substantial facilities for the transportation of this traffic by water, and the indicated lower cost to shippers as compared with all-rail movements, constitutes a serious threat to any participation therein by applicants between the points here considered unless the present rail rates are revised. While, as previously stated, there has been no actual movement of this traffic by water, nevertheless, the essential elements of

competition are all present, and nothing in the statute indicates that an actual movement by water is necessary to establish the existence of such competition. (p. 110)."

And then, the third case, in "Asphalt to Fulton & Arrowhead, N.Y., 238 I.C.C. 531 (1940)", quoting from page 534, the Commission said:

"In circumstances such as presented here, where the competitive movement has not occurred, but the facilities for such movement are readily available at a cost which would make the use of such facilities feasible and desirable . . . we have held that it is not necessary for rail carriers who desire to meet such threatened competition to await the actual competitive movement. (p. 534)."

Q. What have you to say now about this situation?

A. I would say, sir, that it is not the intention of Alberta to propose a stricter rule than that applicable in the United States, nor, on the other hand, to approve language that would permit long and short haul discrimination that rests on purely fanciful claims of competition that might conceivably exist in the future. The phrase "actual and compelling competition" as used by Alberta in its submission refers to a competitive situation which is real and not imaginary. Actual competition exists when there is a competitive movement, or when there is a reasonable likelihood of such movement if an adjustment in rates is not made to forestall it.

Then, the Canadian Pacific Railway Company say, regarding our fifth principle, make that statement at the bottom of page 120, of Volume II, that, as to

the fifth principle advocated by Alberta, "in fact, it is really a duplication of the second principle".

Q. In order that the record will be clear, when we speak of our principle, it is the principle which appears on page 111 at the conclusion of our recommendation.

THE CHAIRMAN: Your recommendations?

MR. FRAWLEY: Yes, sir. The recommendations, and they are also contained in the proposed statute we have handed in.

Q. What have you to say about that? They say it is really a duplication of the second principle.

A. We would say that if the Canadian Pacific really believes that the fifth one is a duplication of the second, then we are strengthened in our argument for having the Board take a more active role because of the fact that the second principle takes no account of collateral losses; and it is quite possible to have a rate which is compensatory and still find you are not receiving compensation as a result of applying compensatory competitive rates. So we would submit it is not a duplication of the second principle, and we would say that it stands on its own as one of the important principles which we would ask the Board to adopt.

Q. Have you anything else to add?

A. No, sir.

MR. FRAWLEY: Might I suggest that if it would be of use to the Commission, the reporter might copy into the record, in today's proceedings, this particular section 4 of the Interstate Commerce Commission Act as it stands now. It might be helpful if that section were copied in at this point.

THE CHAIRMAN: Yes.

THE INTERSTATE COMMERCE ACT

Revised to January 1, 1946

Long and Short Haul Charges; Competition
with Water Routes

Sec. 4. (As amended June 18, 1910, February 28, 1920, August 9, 1935, and September 18, 1940.)
(U.S. Code, title 49, sec. 4.)

(1) It shall be unlawful for any common carrier subject to this part or part III to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part or part III, but this shall not be construed as authorizing any common carrier within the terms of this part or part III to charge or receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section, but in exercising the authority conferred upon it in this proviso the Commission shall not permit the

establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: And provided further, That tariffs proposing rates subject to the provisions of this paragraph may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice.

(2) Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

THE CHAIRMAN: Is that all you have to say?

MR. FRAWLEY: Yes, sir. That completes my case in chief.

THE CHAIRMAN: Before we adjourn I wish to make the following announcements. This Commission will adjourn at the end of the hearing on Friday, December 16. Secondly, this Commission will reconvene on Monday, January 30, for the purpose of hearing any remaining evidence which may be outstanding. And then, at the conclusion of such evidence the final arguments will begin.

MR. EVANS: Immediately after that?

THE CHAIRMAN: That is: we will hear any remaining evidence there may be outstanding, and then go right on to the final arguments.

MR. EVANS: You mean immediately upon conclusion of the evidence?

THE CHAIRMAN: That is our intention, unless some situation arise which would cause a delay. However, that is what we would like to do.

I wish to call to the attention of the Provincial Governments and any other association which is interested in the Crows Nest Pass grain rates question that they must file any brief which they wish to file on that question with this Commission on or before January 15, and that they must also, within that time, give copies of their briefs to the two railways, the Canadian National and the Canadian Pacific. That applies not only to the provinces but also to whatever organizations have expressed a desire to be heard here within that time.

MR. FRAWLEY: If we hand our brief to the railways on the 15th of January, that would comply with the requirement?

THE CHAIRMAN: Yes. We shall adjourn now until tomorrow.

---At 4.45 p.m. the Commission adjourned until 10.30 a.m., Thursday, December 8, 1949.

A.R.

Canada
ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

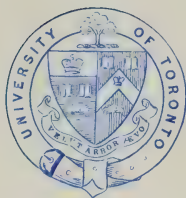
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ROYAL COMMISSION ON TRANSPORTATION

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
THURSDAY,
DECEMBER 8, 1949.

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - - - COMMISSIONER

HENRY FORBES ANGUS - - - COMMISSIONER

- - - -

G.R.Hunter,
Secretary.

P.L.Belcourt,
Asst.Secretary.

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OTTAWA, ONTARIO,
THURSDAY, DECEMBER 8th, 1949

M O R N I N G S E S S I O N

MR. FRAWLEY: My lord, I want to make a correction of one word on page 12048 in yesterday's transcript: there is a word that I want to correct. On that page, about two thirds of the way down, Mr. Harries is giving evidence, and he says, "The phrase "actual and compelling competition'" and so on. That should be changed to the phrase "active and compelling competition", and then it is strictly in line with our submission.

Then I just want to take one minute to refer to the question raised by Dr. Innis yesterday, at page 12038 when he invited my comment upon a passage at page 99 of our Brief, which has to do with water transportation. I think I can make a helpful answer this morning. I would think that my position is that, so long as the water service is not subsidized by the government, that there might be and should very well be by private enterprise a perfectly good and complete boat service.

MR. O'DONNELL: I would ask that one word be corrected in the transcript at page 11922, about three quarters of the way down the page. The word "American" should be changed to "Canadian" there - "they are probably for the purpose of protecting the Canadian railway's interest", rather than the American.

Mr. Chairman, we have very few questions to ask Mr. Harries concerning the Alberta Brief entitled "The Long and Short-Haul Rule", and it occurred to me that it might save time if I just made some observations at this point rather than to ask a detailed number of questions.

The position of the Canadian National Railway concerning competitive rates including transcontinental rates, and incidentally, the long and short-haul rule is

set out, I submit, in its Brief.

The Canadian National is of the view that the provisions of the Railway Act provide adequate powers for the Board to review, and consider, and dispose of complaints, such as complaints put forward in the Alberta Brief. The Board has, in our submission, frequently reviewed the matter of competitive rates to meet water and other competition, and its policies and principles with respect to such matters, including its interpretation of the long and short-haul rule, so-called, are clearly set forth in numerous decisions and judgments which it has rendered in such matters.

It is sufficient, we respectfully submit, to draw the attention of the Commission to the pronouncements in this connection of the Honourable H. A. McKeown, Chief Commissioner of the Board of Transport Commissioners, in his judgment in the General Freight Rates Investigation, 33 C.R.C. 127, at page 135, where there appears immediately before that portion of his judgment which is quoted at pages 15 and 16 of the Alberta Long and short-Haul Rule Brief the following categorical statement regarding, among others, the transcontinental rate scale, and I am quoting from page 135 of the General Freight Rates judgment, and I am quoting a paragraph or two above that which was quoted by Alberta in its Brief at pages 15 and 16. There the learned Chief Commissioner said:

"As far as concerns three of the above enumerated features of our present rate system - namely, Transcontinental Rate Scale, Terminal Tariffs, and the different Standard Mileages, east and west, I am of opinion that no reasons have been urged sufficient to make it advisable that the

same should be eliminated or altered, as asked by various petitioners. They have been discussed individually in different rate judgments. Their origin and the reasons for their establishment and maintenance have been frequently explained and in my view such reasons stand as a justification for the continuance of these existing features of our rate system substantially unimpaired. It is, I think, unnecessary to bring into the discussion a reiteration of what has been previously decided concerning them."

In the interval between the General Freight Rates inquiry of 1927 and the Twenty-one Percent Case, these matters were reviewed on a number of occasions. As late as the Twenty-One Percent Case of March 30, 1948, the Board's attention was given to such matters, as clearly appears in the judgment of the Chief Commissioner where he made mention of numerous judgments covering these matters, at pages 51 and 52.

In the extract of the Lakeside Milling Case, it is stated,

"The subject of water competition and its bearing on rates has been before the Board many times", and a list of cases is there given.

The attention of the Commission is respectfully drawn to Commissioner Cross' judgment, where it is stated,

"The Railway Act has express provisions permitting the establishments of competitive rates which will not be subject to the long and short-haul clause, i.e., that greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction.

"The Railway Act contains specific provisions authorizing a reduced charge on traffic handled to meet competitive conditions without necessitating corresponding reduction in normal rates, and it has been held in numerous decisions of the Board that comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates per se."

Such further representations as we may have on this point, we can put forward at a later time.

Now, I have a few questions of Mr. Harries.

MR. Hu HARRIES RECALLED:

CROSS EXAMINATION BY MR. O'DONNELL

Q. Mr. Harries, just referring briefly to the matter of the canned goods rates which are set out in your Exhibit 136, which we discussed yesterday, that \$2.59 rate is a fifth class all-rail rate, is it not?

A. Yes, I understand that is what it is.

Q. And in the circumstances spoken of by you and referred to in the Exhibit 136, under present circumstances the rate paid at Calgary is never more than the Vancouver combination, which is actually \$2.52, is it not?

A. That is what the railways say.

Q. Well, do you doubt that?

A. I have been told differently by shippers.

Q. Well, my instructions are that the Vancouver combination from Leamington to Calgary would be \$1.40 to Vancouver, and that then the back-haul to Calgary would be \$1.12, making a total of \$2.52;; are you in a position to dispute that?

A. Well, as I said, that is the contention of the

railways. I have spoken to shippers who have said that they do not automatically get that combination.

Q. Well, have you any doubt that they can claim that, that the shippers can claim that rate?

A. I think that is correct.

THE CHAIRMAN: Why must they claim it to get it?

MR. O'DONNELL: Well, that is the rate that they are entitled to, according to my instructions, under the tariff.

Q. The American combination - that is, the United States border combination--which you have worked out in Exhibit 136 would bring the rate that you suggest should prevail, of \$2.49?

A. May I have a copy of that Exhibit? Yes.

THE CHAIRMAN: What is the item again?

MR. O'DONNELL: The American combination, or, rather using the American combination, the rate that you suggest should prevail would be \$2.49, as set out in the second column of figures on the top part of Exhibit 136?

A. That is from Leamington, yes.

Q. That is, that there is a difference of 3¢ as between what I have suggested as the rate that the shipper is entitled to claim, and the rate of this combination that you have worked out so far?

A. Yes, that is the higher combination.

Q. Are you aware of the fact that the \$2.59 rate, that is, the fifth class all-rail rate is a group rate?

A. Yes.

Q. And that it covers a large zone?

A. Yes.

Q. And that the zone covered is roughly from the Detroit frontier as far east as Montreal and up to Ottawa and Sudbury and back to the frontier?

A. Yes.

Q. And that in that zone there are fifty or sixty canning plants that ship?

A. I am not sure of that.

Q. In any event, are you aware, or were you aware of the fact that that was the group rate yesterday?

A. Well, certainly.

THE CHAIRMAN: What is that?

MR. O'DONNELL: That the \$2.59 was a zone rate or a group rate?

A. Yes, I was quite aware of that.

Q. And that it applies from all points in the zone?

A. Yes.

Q. And this Leamington point that you referred to is a point which is relatively near the border, is it not?

A. Yes,

Q. And if shipments were to be made to Calgary from Toronto or from Hamilton using this same combination of rates that you have used with respect to the Leamington shipment, the result would be quite a lot higher, would it not?

A. Yes, it would be.

MR. FRAWLEY: It would not work.

MR. O'DONNELL: No, it would not work. You picked one rate out of the thousands and the others won't work.

MR. FRAWLEY: Yes, we picked one out of a thousand and we still cannot have that one out of a thousand. We talked about zones A and B in this Commissions for days. The Commission surely knows by now that all of the triangle has the same rates.

MR. O'DONNELL: With respect to this particular rate, no mention was made whatsoever.

THE CHAIRMAN: Well, we know it now.

MR. O'DONNELL: Q. For instance, at Toronto, using the same combination, the United States border combination, the rate would be to Calgary \$2.74, and from Hamilton, \$2.70, and what you are suggesting should be done is that with respect to these two points, Leamington and Belle River, which are immediate to the border, the group rate should be set aside and you should be allowed to ship on this combination which you have worked out, and overlooking that the railway, in establishing the fifth class all-rail rate of \$2.59, has taken the good with the bad and has struck a figure that averages at \$2.59. That is the fact, is it not?

A. I do not think we overlooked that.

(Page 12061 follows)

Q. As long as we understand that is the fact, whether it is overlooked or not is immaterial. Now ^{you} by allowing ~~the~~ use of these United States Border combinations, you would in the instance of a shipment from Leamington to Calgary be saving three cents a hundred pounds and the Canadian railways would be losing the traffic and the Canadians would be losing the employment which the traffic provides, and the American portion of the haul would have to be paid for by Canada in American dollars. Isn't that the result?

A. I think so, yes.

Q. Now so much for that. Now Mr. Harries, I have just a few questions regarding the long and short haul rule. At page 110 of your brief you say in the penultimate paragraph:

"In our submission the judgments of the Board of Transport Commissioners in the matter of long-and-short-haul discrimination do not seem to be consistent".

Now, upon what do you base that submission?

A. What we had in mind there, Mr. O'Donnell, was the fact that in one instance they would permit the railways to practise long-and-short-haul discrimination. In another instance in a similar situation they would approve a practice which resulted in the railways blanketing the competitive rate back.

Q. That is what you have in mind?

A. Yes.

Q. Now, would you agree that in each instance that you had in mind of that kind, the Board looked into the particular set of facts governing the situation that it was considering?

A. No, as a matter of fact I am afraid I would

not agree with that.

Q. Now, have you in mind any judgments of the Board in which you can find evidence of inconsistency? If you have I would ask you to be good enough just to name them and indicate them so that we can see upon what the submission that I referred you to, is based.

A. I would suggest, sir, that the inconsistency which we refer to results from the Board permitting -

Q. But my question was: Have you any judgments to point to?

A. In the fact that the Board permits under similar circumstances and conditions different treatment, and I would refer you to the Regina Board of Trade Case and the General Freight Rates Case which, in my submission sir, would indicate that under what are substantially similar circumstances and conditions, they have permitted different treatment.

Q. Based upon different facts and different circumstances?

A. I would say, sir, that as far as the Judgments indicate there was a very limited amount of analysis done in either of those instances with which to establish differences in conditions.

Q. And you do not know what study was conducted by the Board and its technical officers apart from what appeared actually in the Judgments?

A. No, I do not - just what they say in the Judgments.

Q. And those are the cases you have in mind, the Regina Case and the General Freight Rates Case?

A. That is one case and I drew attention yesterday, sir, to the two other cases dealing with a different problem that of circuitry, and referred to the Central

Alberta Dairy Pool Case and to the Palisades Coal Case.

Q. And those are the cases in your brief that you have in mind as supporting the statement that you make at page 110, that the Board's Judgments, in your submission, in the matter of long-and-short-haul discrimination do not seem to be consistent?

A. That is the substantial basis.

Q. So we can go to the those Judgments and determine whether they are consistent or inconsistent, and that is what you had in mind?

A. Yes sir.

THE CHAIRMAN: I think, though, the result of that is as the brief says that:

"No well-defined policy has been established".

Are you questioning that?

MR. O'DONNELL: Yes, I question that, my lord, because the various Judgments set out principles. I do not say that each one summarizes all the principles but upon a reading of the Judgments one will find that the Board has established different definite principles concerning competitive rates and has sufficiently elaborated the matter to make it quite clear that they have established by their rulings, competitive rules and principles concerning competitive rates, and in that connection I do not want to read again the various -

THE CHAIRMAN: That is a matter I suppose we can hear argued later on?

MR. O'DONNELL: Yes. For instance, the one that comes to mind is that the Board has said:

"In numerous decisions of the Board comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates per se."

That is at page 52 in the 21 Percent Judgment and that applies in this very case, in my respectful submission. The rate to Calgary from Eastern points is established as a just and reasonable rate and is fixed in accordance with the Board's power; and then to meet competition at Vancouver a rate is put in which is referred to as the transcontinental rates, and it is suggested, because there is a difference in those two, that the Board has not ^{handled} the matter in accordance with any fixed principles or in accordance with any well-known rules.

THE WITNESS: That, Mr. O'Donnell, incidentally is not what we say. We do not base our opinion on the fact that there is a difference between these two rates. Our case is based on the fact that in dealing with simply the competitive rates, there has not been, as we say, "A well-defined policy".

Q. Well, I will just leave that for argument and say that at this point the Board's Judgments are there, and in my respectful submission, they disclose the manner in which the Board has treated these matters and that the treatment of them has been quite consistent.

MR. FRAWLEY: I agree with everything you say except the last word.

MR. O'DONNELL: I take it you would agree with me, Mr. Harries, that the Board has definitely declared itself of the principle that railways are free to meet any competition where it is to be found. You would agree with that?

A. Yes.

Q. And that competitive rates when established for such purposes constitute no evidence of the unreasonableness of the normal rates themselves? The Board has said

that also?

A. Yes.

Q. Now, could you point to any feature of the rate structure which has been the subject of more continuous consideration or due pronouncement by the Board, than that of competitive rates including transcontinental water-compelled rates? They have been under study and review, have they not, constantly since the very outset of the Board's existence?

A. Well, dealing particularly with rates which cause long-and-short-haul discrimination, I think we have listed most of the cases which the Board has dealt with in that matter, and I suppose it depends upon how you interpret the words "not consistent".

Q. Apart from those you have listed, there are a considerable number of others, are there not?

A. I don't think there are very many that deal with long-and-short-haul discrimination, Mr. O'Donnell.

Q. Well, long-and-short-haul involves competitive rates and in so far as that is concerned there is a considerable number of Judgments other than those you have pointed to?

A. Not dealing with long-and-short-haul which is what we are concerned with now, sir.

Q. Now, under this proposed amendment which you suggest should be put in, that is, the proposed new Section 314A, I take it that would apply to all sections of Canada, would it not?

A. Yes, it would.

Q. And at the present time I assume you would agree that in Ontario and Quebec, in fact in the whole of Eastern Canada, say, from St. John's, Newfoundland, right through to Fort William, water competition prevails and competitive

rates have been established to meet this competition?

A. Yes, that is correct, sir.

Q. And you would also agree that there are presumably thousands of water competitive through rates which are lower than rates to intermediate points in that area, that general area from Newfoundland to Fort William?

A. I have not made an exhaustive study of it, but I am afraid I would not agree with that statement.

Q. Then, let us take the through rate, say, from Montreal to Toronto, the water-compelled rate, would you say that the rates to many intermediate points on that same line or route are not higher than the through rate, the water-compelled rate?

A. I think there certainly would be instances of it done there.

THE CHAIRMAN: Well, what was the fact? It is an ascertainable fact, isn't it?

MR. O'DONNELL: My understanding, my lord, is that there are many, many rates to intermediate points along all these water-compelled or truck-compelled routes, or rather along these water routes and truck routes, which are higher than the through rate which is established to meet competition between two points such as Montreal and Toronto.

MR. COVERT: The only thing I would like to point out there, Mr. O'Donnell is, I don't know whether it was accidental, - I suspect it was accidental - but you asked the witness if there were thousands.

MR. O'DONNELL: All right, I will leave it at thousands. That is my understanding.

MR. COVERT: Another thing; I think the question was confined to water-compelled. I just wanted to have the record straight because the Chairman asked a question

as to the facts. Now, if we can have that whether there are thousands -

MR. O'DONNELL: Well, I will put it this way. My understanding is that there are many, many rates in that general area in Eastern and Central Canada which are competitive rates to meet either water or truck competition where the through rate is lower than the rate to the intermediate points.

THE CHAIRMAN: Well, it ought to be easy to file something, surely.

MR. O'DONNELL: Well, I have not got it here, my lord, but that can be arranged.

MR. FRAWLEY: I certainly would like something like that filed because that is very important. How could you ever find out if it ever applied to intermediate points under the present principle of the Board in long-and-short-haul discrimination?

MR. O'DONNELL: I will see what I can get by way of information.

THE CHAIRMAN: I don't ask you to file thousands of cases.

MR. FRAWLEY: A representative sample.

COMMISSIONER INNIS: Would that hold for truck competition, Mr. O'Donnell?

MR. O'DONNELL: I understand that, Dr. Innis.

THE WITNESS: I was going to say we studied it in our section of the country and I don't believe we were able to find any instance in which a truck competition created long-and-short-haul discrimination because the very nature of the truck traffic would sort of give you a prima facie case against that.

MR. O'DONNELL: My instructions are as I have said, and I will be glad to see what we can get to support

that.

MR. FRAWLEY: Mr. O'Donnell is going to produce something now.

MR. O'DONNELL: In any event, the principles you suggest in your new 314A would be no different for rates of the kind we have just been speaking of, of the transcontinental rates of which you complain?

A. No, not any different at all, sir.

(Page 12072 follows)

Q. Now, if my understanding be correct of the situation concerning the existence of rates to intermediate points which are higher than the through rates, through competitive rates, then under your proposed amendment all those rates would constitute violations of the long-and-short-haul proposal that you advance?

A. Well, today they are violations of the long-and-short-haul proposal. As you say, the difference is that under this new section 314A it would be our submission that the tests which we list here or the principles would have to be applied to those rates.

Q. Well, they would not be violations, would they, Mr. Harries, if the Board is satisfied that, owing to competition, it is expedient that they be allowed to prevail?

A. Yes, they are still violations, but they are justifiable in that instance; I mean, they do not offend the statute, but they are violations of the rule, which is a sort of academic thing.

Q. But under the statute they are quite legal and proper?

A. Oh, yes.

Q. Now, what consideration have you given to that aspect of the matter, if all those rates or a considerable portion or number of them were held to be violations under the proposal that you put forward in your new section 314A? What consideration have you given to the fact that further general increases in rates might be necessitated to meet the additional revenue required by the railways?

A. I think our position in that regard, Mr. O'Donnell, is as stated in our rate principles brief,

where we say that in our submission the first problem is to get a rate structure which is equitable to the various regions of the country, and then the net loss or net gain in revenue that results from the adjustments which we suggest can be taken care of in a revenue proceeding. That is, we do not admit that alterations in the rate structure as such, because they may give the carriers either more or less revenue, can be denied simply from the revenue standpoint.

Q. Well, none of these proposals that you have put forward, as I understand them, would have the effect or were to the effect that the rates should be raised in any instance?

A. I submit, Mr. O'Donnell, that in connection with this particular new section that we are talking about now, the effect of this might be to give a considerable increase in revenue to the railways.

Q. I see. Now, all these things that are set out in your new section 314A as to matters which should be considered by the Board -- the Board is at present under the statute empowered to review all matters of that kind?

A. Oh, the Board does not lack power to look at each one of these things, no, sir.

Q. Now, if this proposed amendment of yours were to become embodied in the Railway Act, would it not in your view tend to retard the ordinary day-to-day ratemaking business of the railways, and possibly even to the detriment of shippers? It would involve considerable delay, would it not, in submitting these things to a Board and waiting for a hearing and approval and that type of thing?

A. Do you mean initially with those which are in existence now, or a new application?

Q. Well, any to which your section would apply might

necessitate an application to the Board for approval?

A. Yes; yes, they would.

Q. And the competitive rate could not be put in under 314A until such time as the Board had approved the rate?

A. Well, we believe that it would be possible for the Board to grant temporary approval if on the face of it it looked as though the rate would conform to these things and if there was not any serious opposition, and that then they would have to time to study it and if necessary a hearing would be held and the action of the Board would be confirmed.

Q. Well, under the situation that prevails at the present time, a rate that was put in that had any bearing on Calgary or Edmonton I assume would draw opposition or objection from my friend Mr. Frawley, possibly; then the result would be that there would have to be a review by the Board, study by the Board, and possibly a full-dress debate and hearing, before the rate could be approved. Isn't that the way it would work?

A. If Alberta or Mr. Frawley felt that they had a case they would certainly pursue that.

Q. Or any shipper?

A. Yes.

Q. Or any wholesaler in Edmonton or Calgary who thought that some competitive rate or change in the competitive rate that might be put in by the railways to meet water competition at Vancouver would affect him in any way, could object under your proposal, and that would tie the whole matter up until the Board had considered it?

A. Mr. O'Donnell, I do not think it is a matter of -- he could object if he thought it was going to hurt him at all; he could object if he thought he could make out a

case, under the Act here.

Q. Yes, that is right; but he would not have to prove that case till it got to the captain's desk, and when the Board was reviewing it it might be found that he had no case or he had a case, but meantime it would hold the thing up, would it not?

A. The onus would be on the railways to show these several things.

THE CHAIRMAN: Mr. O'Donnell, are you purporting there to interpret this proposed new section 314A?

MR O'DONNELL: I am just asking how it would work.

THE CHAIRMAN: I have it before me here, and it seems to me to state that the rates must be first established to the satisfaction of the Board by the railways. Isn't that what you say, Mr. Frawley?

MR FRAWLEY: Yes, sir. It is the Board's application for departure -- I mean it is the railway's application for departure.

THE CHAIRMAN: Is it your intention that the coming into force of this proposed amendment by you should nullify all existing rates of this sort?

MR FRAWLEY: No. That is a very proper question, sir. There would immediately arise the case of existing departures, existing violations, and they would have to be protected; they would have to be protected.

THE CHAIRMAN: Your amendment will require an addition to it.

MR FRAWLEY: To protect existing departures? Oh, yes.

THE CHAIRMAN: In respect of rates now in force.

MR FRAWLEY: Yes, that is right -- which offend.

THE CHAIRMAN: Otherwise you would nullify them all by this, you see.

MR FRAWLEY: Yes, that is right; and the question of protecting existing departures from the rule would have to be considered.

MR O'DONNELL: That is not contemplated and considered by the draft.

THE CHAIRMAN: That is what I notice on reading it over here. It would have the effect of nullifying everything that is now in existence.

MR FRAWLEY: Q. What do you say about that, Mr. Harries, please?

THE CHAIRMAN: Well, is that your intention?

THE WITNESS: No, sir, we---

THE CHAIRMAN: Anyhow, Mr. Frawley, if such is not your intention, if you intend to safeguard existing rates pending some revision of them, I wish you would draft, then, a proviso.

MR FRAWLEY: Very well, because that is true; there will be a temporary situation, a pending situation, which would have to be taken care of.

MR O'DONNELL: I only take what is given, my lord. I was just inquiring of Mr. Harries as to how it would work.

THE WITNESS: Pardon me, Mr. O'Donnell; I must have misunderstood you. I thought we were talking about a new application, not one which would be in effect when this Act came in. I mean, I thought this was---

MR O'DONNELL: But, as the Chairman has pointed out, upon this coming into effect, as I understand it, all rates which have not been approved or allowed would be in suspense, unless you qualify the proposal by some later draft that Mr. Frawley will concoct.

MR FRAWLEY: If you would be good enough to direct your cross-examination on this premise, that there

must be something in the legislation which would give the railways a certain time within which to comply and to bring the rates in line with the present rule. That is quite simple.

THE CHAIRMAN: Later on we will have your revised---

MR FRAWLEY: Yes. I thought I was assisting my friend in continuing his cross-examination.

MR O'DONNELL: That is quite right. I am just, as I said, taking what you originally set up as a straw man, as far as I am concerned, to be knocked down, and you want to bolster it up some more with another draft. We have to look at that when it comes. I was just asking Mr. Harries how it would work.

Q. Under your rule, Mr. Harries, supposing we take a new rate, not one of the existing rates that Mr. Frawley is going to protect some way or another, but a new competitive rate to be put in; I would just like to know what the railway would be faced with there and how the matter would work. Let us take, for instance, something in your own province, say a truck rate between Calgary and Edmonton, for instance. There are a lot of trucks operating between Calgary and Edmonton?

A. Yes, there are a number.

Q. And the railways compete with those, do they not?

A. Oh, yes.

Q. And from time to time I would assume that the railways have had to put in competitive rates to meet the truck competition, in so far as they could determine what it was?

A. Yes.

Q. And, having put in a rate, and having had it approved, for instance, to meet say a 50-cent rate for

carrying groceries between Calgary and Edmonton, the railway might succeed in satisfying the Board that it was necessary under 314A and ultimately get approval. Now, having got approval, and having published the tariff, the trucker who wanted to retain the business might cut under that again, might he not, with absolute freedom, under your set-up out there?

A. Oh, yes.

Q. The railways then would have to do what, to meet that further rate? Come back again to the Board and ask for approval of another rate?

A. Mr. O'Donnell, I do not want to interrupt you, but it is inconceivable to me how you could have long-and-short-haul discrimination as a result of truck transportation between Calgary and Edmonton.

Q. Well, I am just inquiring how that would work, in the event that there might be. There are intermediate points between Calgary and Edmonton?

A. But the truck follows the railway, and it goes through all the intermediate points.

Q. None the less we might want to have a rate from Calgary to Edmonton, a through rate, to compete with through truck competition, might we not?

A. I will grant you the hypothetical situation, certainly.

Q. I just take those; I do not know whether in practice that would occur there, but, whether it was Calgary and Edmonton or any other two points that we might select where there would be a through rate, with a number of intermediate points, your section 314A would come into play ?

A. Yes, where there is long-and-short-haul discrimination.

Q. Now, on that premise, that the railways got approval of a competitive rate to meet truck competition, and the trucker then cut the rate, the railway would have to go back again, on your suggestion, to the Board for further approval, would it not, of a new rate?

A. It would depend what the Board said in your original application. It might, for instance, say that any rate above -- well, it might establish that there is competition, and then with regard to Part 2, where we ask that the rate in effect be compensatory, they may say there that anything above 15 cents a car-mile, for example, is a rate which would conform to this, and then they would leave you free to set your own rate. Now, if it went down below that, you wanted to put a rate below that, in order to meet the competition, I think the answer is, yes, you would have to come back to the Board and ask them to review it. The Board may do one of two things, I would suggest.

Q. All I am interested in is, you would have to go back to the Board for review?

A. Yes.

Q. And when we go to the Board we have to file a specific rate, a specific proposal, and that is the rate that is approved or disapproved, as the case may be, is it not?

A. No; I think you may say that we would like to have a rate not lower than 50 cents, as the case may be. You could have the rate 75, if that is what you want.

Q. Do you suggest that then your new section 314A should be further qualified to permit of that kind of situation?

A. No.

Q. But as it stands today it amounts to this, that the railway would, on the case that I put to you, be obliged to return to the Board for further approval?

A. If the rate that they wanted to charge was less than the rate which the Board had looked at previously.

Q. Yes.

A. Yes, sir.

Q. And as and until the railway gets approval, which may take two days, two months, two years, depending upon when the Board can hear the matter, during all that time the railway is prevented from entering into competition with the truck on the rate that would be necessary to get some portion of the traffic?

A. I suggested, Mr. O'Donnell, that the Board could grant a sort of interim approval if they were satisfied that there was every likelihood that these five provisions would be met by that rate.

Q. But, in any event, whatever delay would be entailed by coming to the Board for approval would have to be suffered by the railway?

A. A delay of a day or a month, certainly.

Q. Yes, or longer?

A. Yes.

Q. My friend points out that your section here as proposed does not provide for any interim approval.

A. He has to establish to the satisfaction of the Board -- well, that is certainly a matter that could be left up to the Board. He might have a prima facie case---

Q. As far as that is concerned, it gets to this, that he has got to go to the Board before the rate can be put into effect?

A. That is right. In this matter the Board is going to be boss.

Q. For instance, these criteria that you have here for the Board's consideration -- number 4 has to be considered:

"The rate to the competitive point is not lower than necessary to meet^{the}/competition."

Now, in your jurisdiction it would be very difficult, would it not, to determine what would be necessary to meet the competition of the trucks that I am speaking of? In your province there are no fixed rates or anything of that kind that one may go to and consult and see exactly what the rate is. All I am interested in is, how would the Board get the information contemplated by section 4 when it comes to dealing with a competitive rate in the Province of Alberta?

MR FRAWLEY: Involving long-and-short-haul discrimination.

MR O'DONNELL: Yes, or any other competition, as far as that is concerned.

MR FRAWLEY: Oh, no.

MR O'DONNELL: All on the thesis of the example that we have been discussing.

THE WITNESS: I think they can find out what the rates are -- even ask Dench of Canada.

MR O'DONNELL: Q. You will agree that there is no official record of what the rates are, the truck rates?

A. Oh, yes; there is no record, no.

Q. Pardon me?

A. No, there is no record.

Q. No record at all?

A. No.

Q. And you suggest, then, that the Board would get information which would satisfy it as to what the rate which might be necessary to meet the competition would be, in what manner?

A. By simply inquiring as to the extent of the competition and---

Q. How would they get that? Inquire from whom?

A. Well, from the people that are providing the competitive service, or the people that are using the competitive service -- in exactly the same way, Mr. O'Donnell, as you find out how to set transcontinental rates today, on the boat, when it runs.

Q. We will get to the boats a little later, but at the moment with respect to the trucks, you suggest the Board would summon the truck operators to come and give evidence as to what rates they were charging?

A. No, I do not.

Q. Where would the Board get satisfactory evidence as to the rate which is necessary to meet the competition? -- because I think we can agree that the Board has no jurisdiction over the truckers?

A. That is right.

Q. They could not ask the truckers to come in and give evidence as to their business and the rates and charges they make?

A. No, they could not.

Q. And there is no official record to go to to get it; you agree with that?

A. That is right. I think they would inquire of the truckers, the same way as they find out today.

Q. Yes, but if the trucker took the position, "I am not bound by your federal Board of Transport Commissioners, I am not under any obligation to disclose my business, which is strictly a provincial matter," then where are you?

A. We are in a hypothetical situation.

Q. Well, that is one way of pointing out some of the difficulties. Thank you very much, Mr. Harries.

COMMISSIONER INNIS: Q. You mentioned Dench;

you regard rates set by that firm as competitive?

A. Yes, sir, I would, as far as the tariffs, railway tariffs, are concerned.

Q. Although owned by the Canadian Pacific Railway?

A. Yes. You might run into some difficulty there, but as far as the tariff language is concerned, the rates would be competitive, sir.

Q. As far as you are concerned?

A. Yes. It is inconceivable to me that truck competition can cause long-and-short-haul discrimination. I certainly know of no instances.

THE CHAIRMAN: Q. Tell us why you say that. Have you in mind now Calgary-Edmonton?

A. Well, almost any situation, sir, because of the fact -- well, take in Alberta, the roads run pretty nearly the same, touch the same points as the railway does, and in order to get long-and-short-haul discrimination you have to have one carrier going to a point which the other carrier does not serve, and that is not the situation as far as I know, sir, in any place in Alberta. It is the same problem as with passenger service, you see. You cannot have long-and-short-haul discrimination on passenger service, because if you try to charge a higher rate to the intermediate point the passenger just buys a ticket to the competitive point and gets off at the intermediate point.

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Q. As a matter of fact, have you any complaint in mind today as to rates between Edmonton and Calgary?

A. Not in connection with this, no sir.

Q. You have none?

A. No, sir.

COMMISSIONER ANGUS: Q. I understand your answer about the trucks to be that competition would never be absent at the intermediate point?

A. That would be my general submission, yes.

Q. Might this situation arise in theory - that the competition at the intermediate point might not be worth meeting, that the amount of traffic that would be in jeopardy would bear a low ratio in some cases to the amount of traffic that would be safe, in any event, and it might pay to make a competitive rate to the distant point and not improve the net earnings of the railway to make a competitive rate to the intermediate point? Would that be a possible situation?

A. Theoretically, sir, that would be, yes.

Q. One other question. We have been using Vancouver throughout as the example of long and short-haul on trans-continental rates. Does the same situation exist in respect to Prince Rupert?

A. Yes, I think it does.

MR. O'DONNELL: I forgot one question, my lord.

Q. With respect to criterion number one of your proposed amendment, it is that the Board should be satisfied that there is active and compelling competition. Now, what do you understand by "active and compelling competition"?

A. I think the best way to explain that is to refer to the record yesterday where we put those three cases of the United States on, and indicated that the

phrase "active and compelling competition", as used by us, refers to a competitive situation which is real and not imaginary.

Q. Well, that is all relative, isn't it?

A. It **is** relative to -

Q. How much competition would have to exist for you to consider it as active and compelling? For instance, would the railways have to wait in the case of water competition until a boat or ship had actually taken a cargo?

A. No, no, they would not. We say that active competition exists when there is, first, a competitive movement, or, second, when there is a reasonable likelihood of such movement if an adjustment in rates is not made to forestall it. That is what we say.

Q. Well, who is going to determine whether it is compelling or not? Have you got to go to the Board again in each case to get a ruling on that?

THE CHAIRMAN: Well, it says so.

THE WITNESS: Yes.

THE CHAIRMAN: Unless the carrier has first established to the satisfaction of the Board that there is active and compelling competition. I think those words "active and compelling" must be taken from the United States statute. It sounds like it.

MR. O'DONNELL: I think the likelihood is that that is where they did come from.

THE CHAIRMAN: Then that language has been interpreted in their decisions.

MR. O'DONNELL: I was just wondering what Alberta suggests to the Commission those words mean, so far as the proposed amendment that they put forward is concerned.

A. Well, we believe that if there is reasonable - if the traffic is moving or if there is a reasonable likelihood

of such movement, having in mind the cost factors, and so on, that then that is active and compelling competition, and even, for instance, in the case of - suppose you had competition in a - someone had threatened to build a pipe line and that could certainly be, - if they had the money to build a pipe line, and the railways after studying the economics of it felt that they could move it at such and such a rate, and so on, that would be active and compelling competition.

Q. Even although the pipe line had not come into being?

A. Oh, yes. We never suggest you build a pipe line before you give them the rate.

Q. I was just trying to see what you meant by it. Do you suggest that in the case of water competition a ship should be actually available?

THE CHAIRMAN: Well, you have a ship.

MR. O'DONNELL: Yes, that particular one -

THE CHAIRMAN: I do not know whether you call that ship the competitor.

MR. O'DONNELL: Well, that is again the thing.

MR. FRAWLEY: That is the competitor.

MR. O'DONNELL: Q. Take that very ship we have referred to so many times, Mr. Harries, - I take it that your position with respect to that is that it is not active and compelling competition within the meaning of your new proposed Section 314A.

A. That would be for the Board to determine, but in my submission it is not, because I think if you fill that ship up every time it runs between those two points, that you would lose more money by lowering the rates in the face of that competition.

Q. Now then, how many ships would you consider on the Montreal or Halifax to Vancouver run would constitute active and compelling competition? Someone would have to look into that, wouldn't they, and that is the Board?

A. Yes, the Board, yes.

Q. And until the Board has done that, the railways cannot, in any shipping season - and it is relatively short - cannot meet competition, such as it may be, with respect to water traffic?

A. Until the railways have satisfied the Board that there is active and compelling competition, they cannot create long and short-haul discrimination.

Q. And it might be the season after the one that they are talking about that they get the approval?

A. Well, the railways move quicker than that, sir.

Q. Would not a similar situation prevail with respect to the rates on the St. Lawrence River and Great Lakes? For instance, if there were a change in the water rate or the truck rate, then the railways, in order to meet that competition, would have to go back to the Board, and it might take-- whatever time it would take--to get the approval, and in the meantime they would be precluded from taking any of the business that they had previously had?

A. Well, the interval might be very short.

Q. And it might be very long?

A. In some instances.

Q. It might be long enough so that they might lose an entire season's business with respect to certain types of traffic?

A. It is possible, certainly.

Q. Whereas the trucker, with whom the railway is competing, can change his rate over night at his whim in your country?

A. And the man who runs a ship on the ocean can change it overnight in his country.

Q. That is quite true, and only with freedom of action on the part of the railways can they meet such changes that they may have to face?

A. I do not think it calls -

Q. With the long delay, or such delay as it may be?

A. I do not think it calls for complete freedom, sir.

Q. Now, have you considered what the effect of your proposed 314A might be on the agreed charge section of the Transport Act; have you given any thought to that?

A. No, because we have asked to have the agreed charges removed.

Q. Thank you very much.

COMMISSIONER ANGUS: Q. If we might follow up for one moment the suggestion that the pipe line that was projected but not constructed constituted active and compelling competition, Would account also have to be taken of point 4 of the proposed amendment, that the rate that the railway might quote must not be such as to prevent the construction of a pipe line?

A. I do not think we - you say that the rate is not lower - not so low that it would prevent -

Q. Not lower than necessary to meet competition?

A. Yes, sir.

Q. Now then, in that event, the compelling competition is that of a pipe line that is planned but not constructed?

A. Yes.

Q. And, therefore, if the effect of the rate quoted by the railroad was to discourage and prevent the construction of the pipe line, would it be too low, being lower than necessary to meet that competition?

A. No, I would not think so, sir.

Q. So you think it would be quite all right under this proposed amendment for the railway to quote a rate so low that it prevented the proposed pipe line from ever being constructed?

A. Yes, I think to be effective, that it would have to be in that particular instance.

Q. And that would not achieve the objective that we were told about in the case of the United States, about maintaining vigorous competition?

A. No, with a thing like a pipe line - it is either vigorous or it is dead, I guess, and you have to take your choice.

CROSS EXAMINATION BY MR. SINCLAIR

Q. Just to start with a few general questions on transcontinental rates: I understand the purport of your evidence to be that you contend that the transcontinental rates injuriously affect Alberta?

A. We submit that they have an injurious effect on buisness, yes.

Q. The answer is yes?

A. Yes.

Q. Now, your concern lies not in the class rates but in the competitive commodity rates; that is correct?

A. Yes.

Q. If the railways are faced with competition in British Columbia on traffic from eastern Canada, and published a toll to meet that competition, how is Alberta injured?

A. Well, they may be injured in two ways: first, they may be injured relatively, and we have indicated the

problem of the back-haul area in that connection; and, secondly, they may be injured absolutely; that is, they may find that they may have to pay more in order to allow the railways to meet that competition.

Q. There are two instances of how Alberta is injured; one is the back-haul problem, and, secondly, there is the question that they may have to pay more for the intermediate point?

A. Yes, the relative and the absolute effect.

Q. Those are the only two ways that they are affected?

A. They could only be affected relatively and absolutely.

Q. There is the back-haul?

A. Yes, and that is relatively.

Q. And there is no other thing under the heading of "relative"?

A. Yes, we relate the position of the vegetable canning industry in southern Alberta. That is a relative disadvantage.

Q. Arising from long and short-haul discrimination?

A. Yes.

Q. That is correct?

A. Yes.

Q. And it is relative to whom?

A. Relative to the eastern Canada packer who gets into Vancouver.

Q. And, is that not a case of what you would call market competition?

A. No, Regarding the rate from Toronto to Vancouver, it may be in part a market competitive rate or it may be a carrier competitive rate; I am not in a position to say that.

Q. Well, let us take a canner at Magrath or Taber, and the canner at Hamilton; the traffic from Hamilton will move through Calgary on the Main line of the C.P.R. to Vancouver, is that correct?

A. I suppose it may move through the Crow just as well.

Q. Do you think it could move through the Crow?

A. I would think so.

Q. And is the station at Magrath on the line with Crow?

A. Well, you said Taber, and Taber is.

Q. Do you know whether or not that is on the route for traffic to Vancouver?

A. No, I do not.

Q. Under your absolute example, that would be where the intermediate rate was higher than the destination?

A. That is correct.

Q. And that is the only example that you have of the injurious effect of the long and short-haul principle in the absolute sense?

A. Yes.

Q. Now, to injuriously affect Alberta would be the result in the absolute sense, of the railways having not used good business judgment in fixing their competitive rates; that is correct, is it not?

A. They might have put a rate in that is too low.

Q. Well, that would be a lack of good business judgment on the part of the railways, that would be correct, would it not?

A. Yes, that is one part of the absolute disadvantage.

Q. I thought that was the only example you gave me - where a rate to the intermediate point was lower than the rate to the destination point?

A. Well, that is a very happy situation.

Q. When the rate to the intermediate point is higher than the rate to the destination point, that is the only example of absolute injurious effect to Alberta that you want to bring to the attention of the Commission?

A. That is right.

Q. And for that to be a disadvantage would mean that the railways were not using good business judgment in publishing a competitive rate to the destination point; is that correct?

A. No, it is a disadvantage whether they have used good business judgment or not - the fact that there is a difference between them - it is a disadvantage.

Q. And that disadvantage is something that you ask this Commission to remove?

A. No, we ask them to modify it as a result of putting in a new section 314A.

Q. If good business judgment on the part of the railways required that a competitive rate be established how can you say that Alberta is injuriously affected in any sense, absolute or otherwise?

A. Well, the railways could use the best business sense, but Alberta would still be injured relatively and absolutely. The mere fact that there is a difference in the rates causes those two things to be true.

Q. Is your last answer the basis upon which Alberta rests its case?

A. I am afraid I do not understand, Mr. Sinclair.

Q. Well, you said the mere fact that there was a difference in the rates, showed that Alberta was injuriously affected. I ask you if that is the basis on which Alberta rests its case?

A. We rest the case on the fact that we are injuriously affected by long and short-haul discrimination, yes.

Q. You said the mere difference in the rates showed that Alberta was injuriously affected. Now, I am asking you, is that the basis upon which Alberta rests its case?

A. No, I did not say that a mere difference in the rate meant that Alberta was injuriously affected. I said the mere difference in the rate meant that relatively and absolutely Alberta was at a disadvantage.

Q. Injuriously affected?

A. Not necessarily.

Q. At a disadvantage, but not a disadvantage that does not result in injury to Alberta; is that correct?

A. They could be at that disadvantage and not necessarily be injured, certainly.

Q. So there may be a problem before the Commission in which there is no injury to Alberta at all, that you have in your Brief, a problem that you set out in your Brief that has resulted in no injury to Alberta at all?

A. There may be a case in which there is no unwarranted injury, but I think when there is a relative and an absolute difference, she would be at a disadvantage.

Q. I am asking - I am talking about injury - I want to have it clear what injury Alberta is suffering?

A. Well, she may not be suffering, well, that word "injury" - I would say that she would be at a disadvantage, but it may not be an unwarranted disadvantage, and if injury is the same - if injury means an unwarranted disadvantage, then I disagree with you.

Q. Would you say an unwarranted disadvantage to Alberta was the same as lack of good business judgment on the part of the railways in publishing tolls?

A. It may in part be a lack of good business judgment.

Q. If it was only a part, what part are you leaving out?

A. Well, for example, the railways may publish a rate which creates long-and-short-haul discrimination because of the connection between that particular rate and that particular traffic and some other parts of their service, so that you cannot say that it was bad business judgment to publish that particular rate.

Q. And yet it would be unwarranted, an unwarranted disadvantage to Alberta?

A. Yes, taken in the main it would be.

Q. Taken in the what?

A. In the main it would be.

Q. Taken in the main it would be. What do you mean by that?

A. In the main it would be.

Q. What do you mean by that?

A. In the main it would be an unwarranted disadvantage as far as Alberta is concerned.

THE CHAIRMAN: I think now you are probably discussing the meaning of Clause 3 in this proposed new section which makes it one of the conditions that the rate to the intermediate point is just and reasonable. That is what you have in mind, I suppose, have you?

MR. SINCLAIR: Yes, and also, my lord, the statement that was made by the witness Harries at page 11642 of the transcript when he first took the stand to present this brief in chief, when he said "that the transcontinental

rates are where the most flagrant discrimination is found" and I am using his words - "the most flagrant discrimination".

THE CHAIRMAN: That may be because those rates sin against one of these five clauses.

MR. SINCLAIR: That may be.

THE CHAIRMAN: It seems to me if the railways are to satisfy Clause 3 that the rate is just and reasonable, that would answer all this?

MR. SINCLAIR: My lord, I submit that under the Railway Act, if they do not, that a complete and absolute remedy lies in the hands of Alberta to see that they do.

THE CHAIRMAN: Yes, but always remembering that the intent of this amendment is that the railways have the onus on them first of all of showing that the rate which they are to provide for the intermediate points is just and reasonable. Now you point out, that at the present time anybody who thinks that an intermediate rate is not just and reasonable may go to the Board and complain?

MR. SINCLAIR: Yes sir.

THE CHAIRMAN: But do you understand that, according to Mr. Frawley's proposal, the situation would be reversed, the railway would first have to show the Board that the intermediate rates are in each case just and reasonable? Then, I suppose, all these materials would come in - industries in Alberta suffering on account of it, are the consumers at the intermediate points paying an unduly high price because of an unduly high intermediate freight rate, and so on.

MR. SINCLAIR: Well, it is for that reason, my lord, that I find it difficult to understand why the witness says that in these transcontinental rates Alberta is saying that that is the most flagrant kind of discrimination and

yet I am trying to find out from the witness how Alberta is injuriously affected, and I must say I am not getting any very definite examples from the witness and the suggestion, of course, in argument would be that he cannot give any.

THE CHAIRMAN: I am wondering whether you can bring your question down to points in Alberta which are intermediate points and question him about those points.

MR. SINCLAIR: Yes, my lord, my intention was as soon as I found out about this flagrant discrimination so-called, to pick out of the four figures that the witness has put into his brief on pages 3 and 4, take him through that if that is satisfactory to your lordship.

... Recess.

MR. SINCLAIR: Now, in dealing with the so-called flagrant discrimination, you do not mean, or do you, that the railways are flagrantly disregarding good business practice?

A. Flagrant discrimination to me is discrimination of the order where you have a dollar to the competitive point and two dollars to the intermediate point. It may be entirely warranted but it is a discrimination and it is flagrant.

Q. Your use of that term is based solely on a difference of rates?

A. Certainly.

Q. And has nothing to do with the exercise of good business judgment by the railways or any injurious effect on Alberta whatsoever?

A. No, the mere existence of the difference is a discrimination, and it is a flagrant discrimination when it is of that magnitude, two to one.

THE CHAIRMAN: Well, does not flagrant only mean "Apparent, visible"?

MR. SINCLAIR: It may. It could also have other connotations, I submit, my lord, and I am trying to see what the witness has in mind.

MR. FRAWLEY: My friend is thinking of "in flagrante delicto" or something of that kind. There is nothing flagrant about my friend Mr. Jefferson or the Canadian National.

MR. SINCLAIR: I am glad to have the record disclose that Canadian Pacific traffic officers use good business judgment. Now, at page 12039 of the transcript in answer to Dr. Innis, your view was that the railways could meet water competition if they published a competitive rate which covered total costs. That is Volume 61, page 12039 at the top of the page, that is, that the railways should not be permitted to publish a competitive rate which does not cover total costs. Is that what I am to take from that answer?

A. "Total cost of the movement".

Q. Now, just what do you mean by "total cost"?

A. Well, the cost that is occasioned by moving that particular traffic.

Q. So that what you mean is the amount that would be saved by the railways if they did not move the traffic?

A. Yes, I think that would be a fair way of putting it.

Q. And so, therefore, it means out-of-pocket costs?

A. No, it does not.

Q. Does it mean out-of-pocket costs plus a proportionate share of constant cost including a share of return on investments?

A. It depends on the particular movement and the

character of the movement.

Q. Well, when you use the term "total cost", do you mean it to convey to the Commission the costs that would be saved if the traffic was not moved plus a proportion of constant costs including a proportion of return on investments?

A. Well, I can only say that it depends on the particular movement as to what would constitute the total cost of that movement.

Q. So, would you say this, that in dealing with one movement, total cost would be out-of-pocket cost? Is that correct?

A. That is conceivable, yes.

Q. And in considering another movement it would mean not only out-of-pocket costs but a proportion of constant cost including a proportion of return on investments. Is that correct?

A. Yes, that is correct.

Q. Now, in the latter case would you restrict that total cost to include a proportion of constant cost and a proportion of return on investment to the case where the railways are meeting water competition?

A. It would depend on the particular movement again.

Q. Can you give any example, or can Alberta give me any example of where the competitive rate should not be below the level of out-of-pocket cost plus a proportion of constant cost including a proportion of the return on investments? Can you give me an example of that?

A. The distinction I am trying to draw is, that if you have an occasional movement, total cost of the movement in that case might be simply the out-of-pocket cost but where you have a movement which takes place

throughout the year, in fact over a period of years, that the concept of cost there is radically different from the first instance, and the concept of cost in the second instance could very well, I suggest, embrace this total cost percentage including even a return on investments.

Q. Now, we have transcontinental rates which are in all the year round and they have been in for a good many years. Now, in publishing a competitive commodity transcontinental rate, would you say that the level of that should be fixed on total costs in the sense that you are using it?

A. I would say, Mr. Sinclair, that it would have to be very close to that.

Q. Now, in Alberta there is truck competition all the year round. That is correct, is it not?

A. Yes.

Q. Now, in publishing a competitive tariff to meet truck competition, would you apply the same criteria?

A. Yes, I would.

Q. And you would not allow the railways to publish a competitive rate to meet truck competition unless that rate was of such a level as to recover for the railways their out-of-pocket costs on transportation, a proportion of the constant cost including a return on investment?

A. I say it would have to be very near to that level.

Q. What does "very near" mean, Mr. Harries? Would you say within ten percent of it?

A. I would not hazard a guess as to the percentage. I think that would have to be considered concerning the particular movement.

Q. But certainly it would be much above out-of-pocket?

A. It would, yes.

Q. Now you know that the concept of the Canadian Pacific is that competitive rates would meet the out-of-pocket costs plus some contribution to overhead expenses. Now I understood that you were in agreement with that proposition because I find at page 11647 of the transcript, to use your words, in dealing with the statement at page 2 of your brief:

"The railways will contend that as long as a through rate published covers the additional expenses it occasions, the railways and all the shippers are better off."

And the page of the transcript that I refer to is 11647 where you said you were in general agreement with this explanation. Now, do you want to change that in concurrence with the position of the Canadian Pacific?

MR. FRAWLEY: It only cites a problem and does not give the solution. We examine the problem and propose a solution.

THE WITNESS: I do not think I would wish to alter that position at all.

MR. SINCLAIR: You would agree with the position of the Canadian Pacific in regard to the level of competitive rates?

A. Are you speaking now of the Walker Definition, so-called?

Q. Yes.

A. No, I think that is incomplete.

Q. And so when you said that you were in general agreement with the railway's position, as you stated it on page 2, you want to change that now, do you?

A. No, not at all. There are many more railroads in many more positions than the one that the Canadian

Pacific adopts. This is a general statement of the problem and we are in general agreement on it.

Q. Take a look at the way you express it on page 2 - never mind the so-called Walker Definition:

"The railways will contend that as long as a through rate published covers the additional expenses it occasions ..."

A. Yes.

Q. You said you were in general agreement with that?

A. I am, certainly.

Q. And say that the additional expense that a movement occasions is what governs the level of the competitive rate?

A. That is correct.

Q. And you do not think that is out-of-pocket costs?

A. No.

Q. In that sense then you differ from the position of Manitoba where at Chapter 1X, page 12 of the mimeographed brief they state in dealing with competitive rates; "That they should be of a level (and I use their words) sufficient to meet the out-of-pocket costs".?

A. If that is what they state, then in many instances I would disagree with them.

Q. You want to have a fluctuating level of rates to determine the level of competitive rates. Is that correct, to sum up your position?

A. I think different competitive situations require that either more or less of the total cost picture be considered when you are determining whether the rate is covering its costs, yes.

Q. If the hard core of traffic for which a line

of railway is used is not the competitive traffic, would you still say that the total cost should be met by competitive rates?

A. I would like an explanation of "hard core"?

Q. That is the reason why the railway was built, the majority of traffic moving over it, the reason why it is substantively a major part of the system.

A. The concept of cost that you use in meeting competition, in my submission Mr. Sinclair, depends upon the proportion that the competitive traffic is of the total traffic, the continuance of that competitive traffic and other factors of that nature.

Q. As long as the competitive traffic is not the hard core of traffic that is moving over the line, you would not set the level of the competitive rate on the basis of total cost. That is right, isn't it?

A. It would depend on the characteristic of the competitive traffic.

Q. Do you know if that concept of fixing the level of competitive rates is adhered to by other regulatory bodies?

A. I believe that it is generally recognized that the costs which are attributable to a particular movement depend on the characteristics of that movement and its continuancy and so on, and I think such things as that are taken into account in fixing the minimum level of a competitive rate by regulatory bodies.

Q. Do you know any regulatory tribunal which fixes the level of competitive rates by looking at total cost?

A. That is not what I said happens. The answer to that is no, but I do not contend that -

Q. That is all I want to know.

MR.. FRAWLEY: Well, if the witness has something

to add to his answer, you do not mind his proceeding?

MR. SINCLAIR: No, except that I would like to have it in sequence.

A. I have not said that you look at the total cost in all instances. I said in some instances it would have to be very close to the total cost. In other instances it might be simply out-of-pocket and I think it is a concept where one cannot be specific.

Q. So in other words, in fixing a competitive rate level you have to exercise judgment?

A. Most certainly.

Q. And does this come back to the fact that you are in some way complaining that the Canadian Pacific has not exercised such judgment in fixing the level of competitive rates?

A. We simply say that the Board should require these certain things to be shown in each instance where there is a long-and-short-haul discrimination.,

Q. If the Canadian Pacific has exercised good business judgment in setting the level of competitive rates, why do you want to have some other tribunal exercise that judgment?

A. In the first place I do not think the Canadian Pacific is a tribunal so it is not a matter of having "another tribunal".

Q. All right, a regulatory tribunal. Don't fence with me.

MR. FRAWLEY: He is not fencing; you just walked right into it.

MR. SINCLAIR: All right, I will walk right out of it and start again, Mr. Harries. In having the Board fix the level of competitive rates, do you think that they could exercise better judgment than the railway officers

have heretofore (if this legislation goes into effect)
fixed that level?

A. I don't think it is simply a matter of better judgment but we think that the Board should require that these things be shown in each instance. Now, it might not boil down simply to a matter of judgment at all.

(Page 13013 follows)

Q. What would it boil down to if it was not judgment?

A. Well, as I tried to point out, the railway may take a number of other things into account other than these particular things here.

Q. That is not very clear to me, what "here" is?

A. Well, what I have in mind is that in fixing a competitive rate the railway may have in mind the relationship between that particular traffic that moves on that competitive rate and other traffic which may be available to them, or they may even take into consideration the fact that they want to move the goods transcontinentally instead of having them come around by boat, and considerations, general considerations---

Q. Do you think that in fixing the level of competitive rates any of those items should not be taken into consideration?

A. I think where long-and-short-haul discrimination is concerned that the Board should have an opportunity to assess these several reasons.

Q. I am trying to find out why; I am trying to find out whether Alberta believes that the Canadian Pacific officers have not exercised good judgment and taken into consideration all these factors in fixing the level of competitive rates ?

A. We believe---

Q. That is an easy question. Is that your view? You have spent months trying to figure it out.

A. We believe that it is not sufficient to leave the matter of long-and-short-haul discrimination up to the railways. We believe further that it is not sufficient to leave the matter under the present section 314, subsection 5, and that is why we are proposing this amendment. That is our position.

Q. Well, are you proposing that the railways should be regulated just because you have a feeling, or do you think they should only be regulated if there is good reason for it?

A. We are proposing that they be regulated because there is good reason.

Q. All right. Now, what are those reasons? Is it a lack of good business judgment in fixing the level of competitive rates by railway officers? Is that one of the reasons?

A. That is part of it, I would suppose.

Q. All right, then, you are making the charge, or Alberta is making the charge, that the railways have not exercised good business judgment in fixing these competitive rates?

A. As I have tried to point out---

Q. Now, just a minute, Mr. Harries. Is that or is it not the charge of Alberta?

A. As I have tried to point out, Mr. Sinclair, and as we said in our brief on Industrial Location, what may be excellent business judgment as far as the railways are concerned may not be and is not necessarily good as far as any particular community is concerned. We want the Board to take these things under their control. We do not want to tie the railways' hands. We want just affirmative proof of these several propositions, and then there will be long-and-short-haul discrimination.

Q. Am I to take from your answer that you think that considerations other than business judgment should enter into the fixing of transcontinental rates?

A. No, I think it is probably a matter of -- I think it is simply a matter of having the Board, which is, after all, charged with regulating these matters, have affirmative

proof shown to it that these various things are in fact the case, by the railways, and then you can have all the long-and-short-haul discrimination you want.

Q. Is Alberta suggesting, Mr. Harries, that considerations other than business judgment should enter into the fixing of competitive rates? Surely you can answer that.

A. That is a very simple question. In general, no; it is a matter of whose business judgment, I suppose, or what things you take into account when you use that phrase, "business judgment", that is all.

Q. I take it, then, that Alberta would rather have business judgment being exercised by the Board than by the railways in fixing rates?

A. Quite obviously, Mr. Sinclair, we are not satisfied with the manner in which these things are handled at the present time.

Q. But it is not on the basis of business judgment that you are not satisfied; am I right in that?

A. Well, as I have indicated---

Q. I am trying to find out why you are not satisfied, and I have tried to find out if you are satisfied with the business judgment of the railways. Now, if you just tell me that you were, then I can go on.

A. Well, I have indicated that---

Q. Are you satisfied with the business judgment being exercised by the railways in fixing the level of competitive rates?

A. Not altogether.

Q. Not altogether?

A. No.

Q. And the particulars that you are not satisfied with, would you mind setting them out for me?

A. Well, as I pointed out, what may be good business

judgment for the railways is not necessarily to the advantage of particular communities and so on, and if that is the case then the Board should take an interest in these matters, and we suggest that that interest should be along the lines of this 314A which we have proposed.

THE CHAIRMAN: Mr. Sinclair, does it not appear this way to you, that, whatever Mr. Harries may think of the situations that you depict to him, Mr. Frawley has put his case in this amendment?

MR SINCLAIR: Quite so.

THE CHAIRMAN: Now, if this amendment should be adopted by Parliament, it would be the Board's duty to interpret it as it is read, not because of what somebody said here today in evidence; they would have to take it and interpret it as they would any other statute.

MR SINCLAIR: Well, I take it, Mr. Chairman, that---

THE CHAIRMAN: That is, you are putting what you think is right into language. Now, that language must be construed next year, ten years, twenty years or thirty years hence by whatever body is reading it and applying it.

MR SINCLAIR: I take it, Mr. Chairman---

THE CHAIRMAN: Now then, you have it; it says, for instance, as I pointed out a while ago, that one of the things that must be established is that the rate to the intermediate point is just and reasonable.

MR SINCLAIR: Yes, Mr. Chairman, but Alberta comes forward with the brief on long-and-short-haul discrimination and they set out in that brief---

THE CHAIRMAN: Whatever they say in that brief certainly is put into substance here. That brief points out that they want this to be the law for the future.

MR SINCLAIR: I am trying to find out what the reasons and the need for a change in the legislation are, whether it is merely a feeling of Alberta---

THE CHAIRMAN: Is not this the case, that the principal change is that the onus of proof is being shifted?

MR SINCLAIR: Yes, but if Alberta---

THE CHAIRMAN: For instance, if Alberta or if any locality in Alberta could go to the Board today and show the Board that a certain rate is unjust because it is not just and reasonable in regard to intermediate points, they could get Board action, couldn't they?

MR SINCLAIR: Quite so.

THE CHAIRMAN: Now, the new suggestion is that, instead of that, the railways show affirmatively that the rates which they suggest to intermediate points in Alberta are just and reasonable.

MR SINCLAIR: Yes, but what is the need? That is what I am trying to explore.

THE CHAIRMAN: I beg your pardon?

MR SINCLAIR: What I am trying to explore with the witness, my lord, is, what is the need for this change? How has Alberta been injuriously affected by the situation as it exists today?

THE CHAIRMAN: Well, they have given us a brief of a couple of hundred pages.

MR SINCLAIR: Quite so.

THE CHAIRMAN: And have spent several days here pointing out why they think as they do. But, in any event, I think it is well to remember that they are committing their case to this legislative language, which other people will have to interpret as they go along carrying out their functions as members of the Board.

MR SINCLAIR: Surely, my lord, Alberta must have some reasons that are subject to test as to the necessity for the legislation they propose.

THE CHAIRMAN: I think it comes down to this: They say that instead of the particular locality complaining of a rate that has been fixed by the railway, the railway should first go to the Board and satisfy the Board that the rate they propose is fair and reasonable and meets with all the other requirements of the section before it becomes effective at all.

MR SINCLAIR: I quite understand the result of the proposal. What I am trying to understand is the necessity for it---

THE CHAIRMAN: You say that right today they are not suffering from any hardship.

MR SINCLAIR: Quite so.

THE CHAIRMAN: That no point in Alberta is suffering by reason of the fact that it costs more to bring goods from Eastern Canada to that point than from Eastern Canada all the way to Vancouver.

MR SINCLAIR: Absolutely; and if they were suffering they could bring a case to the Board and get relief.

THE CHAIRMAN: I know that.

MR SINCLAIR: And the Board on every case that they have brought has found that they were not suffering, or that the amount of their suffering was so small compared to other considerations that there should be no necessity for changing the existing rate structure.

MR FRAWLEY: Of course, my friend is not putting it quite fairly. If we went to the Board today, we have nothing but section 314, subsection 5, and that is a purely negative section. My friend knows very well that

the railway simply puts in the violating rate and then leaves it to somebody to complain, and then when the complainant comes he has simply this subsection to talk about, which is merely, was there competition? -- that single point. Now, surely my friend must be fair, and compare what there is today contrasted with what---

MR SINCLAIR: I am always fair, Mr. Frawley.

MR FRAWLEY: ---we propose. It is a change in the law that we need. We are not worrying about what we can do today.

MR SINCLAIR: Well, Mr. Chairman, I can only refer to this judgment of the Chief Commissioner in the general freight rates investigation of 1927, where he says, "The instances of such" -- that is about this very point that you put to me, my lord, about back haul, going past their door, to use the phrase that Mr. Frawley has shouted all over the country.

MR FRAWLEY: A truthful phrase.

MR SINCLAIR: "The instances of such were not impressive and are not to be met by alteration or elimination of the transcontinental rates, which under present conditions need no justification."

MR FRAWLEY: Yes.

MR SINCLAIR: Now, once again the Board has the same problem before them about transcontinental rates and the complaints that are made on them, and they are engaged in a study of the traffic that is moving in the general freight rates investigation provided by P.C.1487; but the last time they had a general investigation and in every individual case that anybody in Alberta has brought before them, after full inquiry into all the facts they have found that there was no suffering or there was no injurious effect to Alberta; and I am trying to find out from this

witness what additional facts, what additional evidence, he has got to present to this Commission that would necessitate a change in the situation that now exists.

THE CHAIRMAN: Well, it is the paramount duty of the Board -- I have the present Act before me -- to determine and enforce just and reasonable rates. Now, that is in all cases; that applies to intermediate points and distant points and every other point.

MR SINCLAIR: Yes, sir.

THE CHAIRMAN: This proposed amendment would simply repeat that -- the rate to the intermediate point is just and reasonable, only that if this amendment is adopted the railways would have to show that, instead of the Board waiting for some intermediate point to complain. I mean, is not that the only---

MR SINCLAIR: Yes, but what I am trying to find out from the witness is why the railways should be put to all this trouble and expense, if there is no justification for any change in the legislation. I mean, this complaint has been brought by Alberta---

THE CHAIRMAN: Well, are you going to arrive at any result?

MR SINCLAIR: Well, certainly Alberta, which my friend Mr. Frawley said had considered this to be of such tremendous importance, and which they had given so much time and effort to, must have considered very minutely all the instances in Alberta that they could use to support this change in legislation that they are asking this Commission to recommend.

THE CHAIRMAN: Now just put what you have in mind to Mr. Harries and we will see whether it will get us anywhere.

MR SINCLAIR: Well, I would ask Mr. Harries to

take his brief and turn to the figures at pages 3 and 4, which he says are the four instances, which he says are the situations which give rise to long-and-short-haul discrimination. I propose to take them in order, my lord, to see just how Alberta is affected by them. I take first figure 1, where the two railways both serving points A and B have equal mileage between the two points, and where there is traffic moving to B. Now, the suggestion is that the two railways, equal mileage, going to B, are in competition, and that competition is going to depress the rate at B, and that that depressed rate will not be reflected in the intermediate points C and D. Now, in chief my friend Mr. Frawley in putting this part on the record said just to read these four pages into the record, but the witness Mr. Harries made some comments as he went along. I find on checking the transcript that they were not taken down by the reporter, but my note shows that in dealing with figure 1 Mr. Harries said, "This is not important now." Now, in view of the fact that it is not on the transcript, I would ask him to tell me if my note was correct, and, dealing with figure 1, that this is not important now.

THE WITNESS: Yes, that is correct.

MR SINCLAIR: Q. Can you give me any example in Canada where there is any discrimination that would fit the illustration that you show as number 1 at the top of page 3 on your brief?

A. No.

Q. So therefore in dealing with that example I suggest that we can draw our pencils through it and forget about it, because it has got no relevancy and there is no complaint based on it?

MR FRAWLEY: Of course, there is no complaint. We

were exposing this proposition; we were explaining all that we could about long and short haul. When my friend says because there is no complaint it should not have been there, I resent that, that is all. I do not understand what it was for at all.

MR SINCLAIR: Just trying to narrow the issues with the four examples, and, in view of the fact that number 1 is not important, I suggest that we can draw our pencil through it and confine ourselves to the ones where there is some discrimination, and therefore I would say would have some importance. Surely we do not have to consider 1; Mr. Frawley is not asking us to consider hypotheses and theory, he is asking us to consider facts.

THE CHAIRMAN: I understand, Mr. Frawley, that you do not know of any case in Canada where the situation depicted by number 1 exists?

MR FRAWLEY: Where that particular kind of long-and-short-haul discrimination exists; that is quite right, sir; and when we put it in we put it in for the purpose of developing the theoretical side of this matter, that is all.

MR SINCLAIR: Q. Now, dealing with your figure 2, this illustrates a problem in what is known as circuitry, that is, where there are two railroads serving two points A and B, but one railroad has a longer mileage than the other; that is correct, is it not?

A. That is what it says, yes.

Q. I am just trying to see if I understand these, Mr. Harries. You seem very familiar with them. Now, I believe that an example of this type of discrimination was before the Board in the Central Alberta Dairy Pool case, that is referred to at page 18 of your brief. That is an example of the type of discrimination that is illustrated by your figure 2 on page 3; is that correct?

A. Yes.

THE CHAIRMAN: Which case?

MR SINCLAIR: The Central Alberta Dairy Pool.

Q. Now, I believe when you were giving your evidence in chief -- and here again I cannot find it in the record, but my note shows it to be that you said that Alberta took the position that a higher rate should not be published from Penhold, Alberta, to Vancouver on the Canadian Pacific line than from Edmonton to Vancouver; is that correct?

A. Your note is wrong.

Q. My note is wrong?

A. Your note is wrong.

Q. Well, what was it?

A. Our position is that the same principles which we embody in this 314A should apply to this situation as they would apply to the other situation.

Q. Well, in dealing with circuitry when would you say that an intermediate point at which there is no competition should have the same rate as the rate applying to the competitive point?

A. Well, it would depend on proof of these---

Q. I would like some practical examples, Mr. Harries. You have spent months studying this and studying Alberta conditions; I would like some practical examples to get my teeth into. I do not want to deal with theory if I can help it; I am not equipped to. Let me have a practical example of where you say that Alberta is suffering, is injuriously affected, by this type of discrimination that you illustrate by your example, figure 2?

A. We, as I indicated, are particularly interested in the discrimination which results in transcontinental rates. However, this type of discrimination occurs -- I am not aware of any illustrations in Alberta where the discrimina-

tion results in a positive detriment to the intermediate point, but it is certainly one form of long-and-short-haul discrimination, and, as we indicated, this amendment that we are suggesting is one which is generally applicable, and because we did not happen to have a situation in Alberta which found us positively injured, we were thinking of this throughout Canada, not simply for Alberta. That is why it is included.

Q. That is fine. Now give me an example anywhere else in Canada of where there has been any injurious effect on account of this example in figure 2?

A. No, I cannot. I have not looked for them. I did not spend my time with that.

MR SINCLAIR: I suggest, my lord, therefore that this is another one we can draw our pencil through.

MR FRAWLEY: Well, you can draw your own pencil through it, that is all. That is fine.

MR SINCLAIR: Q. Now turn to figure 3, Mr. Harries. That is an example of where a railroad is meeting water competition; correct?

A. We said water or pipeline, having lower cost.

Q. Well, I am looking at your example; it has got water route Y; I am just looking at your example, water route Y?

A. That would lead you to believe it is a water route, quite correct.

Q. That is what I asked you.

A. Quite correct.

Q. Now, an example of that, I think, would be the transcontinental rates; is that correct?

A. The water route, you mean?

Q. Of the type of discrimination that you refer to and illustrate by your figure 3, which is at the top of

page 4 of your brief; is an example of that the trans-continental rate?

A. When there is in fact a water route, yes, and there is a carrier on it.

Q. Then there has to be, one, a water route -- is this what you mean -- and, two, a carrier on it; is that your evidence?

THE CHAIRMAN: A what?

MR SINCLAIR: A carrier on it.

THE CHAIRMAN: On the water?

MR SINCLAIR: Yes.

Q. Now, those are the two tests that you want to have looked at when we are considering the type of discrimination set out in your figure 3; is that right?

A. I think that what we say below it indicates what is required in this example.

Q. Well, I just took your answer, Mr. Harries.

A. You took part of my answer, Mr. Sinclair.

Q. I took it all; a water route with a carrier on it, is what you said. Now, I just want to know if you want to change that in any way. Do you want me to consider this with a water route with a carrier on it, or do you want to recede from that a little bit?

A. I would like you to consider this, Mr. Sinclair, as railroad X, which has a direct line between A and B to points which are subject to competition by water route Y, and under the railway distance scale the rate from A to C on a certain article is \$1.00, and from A to B the rate is \$1.25; the water rate on the same article between A and B is 80 cents.

Q. You are reading the brief; I can read it too; that is one thing I can do.

A. That is the way this example is; I do not think

I can put it any better.

Q. I ask you to turn your mind to the illustration, and I want to get some practical application from it. That is what I am leading up to. Now, I asked you if that is an illustration of transcontinental rates, and your answer to me was, yes, if there was a water route and a carrier on it. Now do you want me to consider that water route Y has to have a carrier on it to fit with this example? That is easy, Mr. Harries.

A. I want you to consider when the water rate to the port is below the railway rate which would ordinarily be charged to that port. That is the substance of it, I think, Mr. Sinclair.

THE CHAIRMAN: In that case there would be a carrier on the water to give a rate.

MR SINCLAIR: All I am asking the witness to tell me, my lord, is, is it Alberta's position that there has to be not only a route but also a carrier on it?

THE CHAIRMAN: Well, he says the water carrier has the rate of 80 cents; that presupposes that there is at least one ship.

MR SINCLAIR: I am merely trying to test how far his examples and illustrations go, my lord. I am going to assume that the rate is lower at the destination point B.

THE CHAIRMAN: If there is a rate at all.

MR SINCLAIR: Well, on the railway I am going to assume that there is.

THE CHAIRMAN: You mean the railway rate?

MR SINCLAIR: Yes; is lower at the destination point B, and I am also going to assume that the rate is higher at the intermediate point C, as he suggests. Now, I am just asking him if Alberta's position in dealing with this illustration of long-and-short-haul discrimina-

tion requires (1) a water route and (2) a carrier on it.

THE CHAIRMAN: He says the carrier charges 80 cents.

MR SINCLAIR: That is what he has got down here for the example, but I am really seeing how far he goes.

THE CHAIRMAN: I thought you were dealing with the example.

MR SINCLAIR: I am dealing with the figure, my lord.

THE CHAIRMAN: Well, it speaks of a water carrier whose rate is 80 cents. If you want to ask another sort of question it is quite all right, but then you are departing from the figure. He is building up his case by saying the water rate on the same article is 80 cents; that means there must be somebody who has a rate of 80 cents.

MR SINCLAIR: Q. Let us take the figure at the top of page 4 of your brief, Mr. Harries.

A. That is the one we have been discussing.

Q. Yes; and disregard the language that is below the figure.

A. All right.

Q. Now, assume that all we have is a water route between A and B and a railroad between A and B, and the railroad---

THE CHAIRMAN: And no ship.

MR SINCLAIR: Just a moment, my lord; that is what I want to find out from the witness.

THE CHAIRMAN: All right, go on.

MR SINCLAIR: If I may.

THE CHAIRMAN: Well, you said you have only the water route.

MR SINCLAIR: That is right.

THE CHAIRMAN: All right. I wanted to know what you meant by that word "only".

MR SINCLAIR: That is the point I am trying to make.

Q. Do you suggest, taking that, that there would be unjust discrimination or unwarranted difference, to use the phrase, if the railroad published a higher rate to the intermediate point C than it did to the destination point B?

A. We are not talking about unjust discrimination in that brief, but---

Q. Unwarranted difference; I changed it to your language, Mr. Harries.

A. The new section 314A---

Q. Just answer my question; would you consider---

A. I am trying to answer your question, Mr. Sinclair. We say that it must be shown that there is active and compelling competition at the competitive point which is beyond the control of the applicant carrier, and such competition is absent at the intermediate point. I think that is our position, Mr. Sinclair.

Q. Turn your mind again to the illustration at the top of page 4 of your brief, and think of A as being Montreal and B as being Vancouver. Now, do you think that there is an adequate port at Montreal?

THE CHAIRMAN: That there is what?

MR SINCLAIR: An adequate port at Montreal.

THE WITNESS: I am quite sure there is.

MR SINCLAIR: Q. Do you think there are adequate wharves and docks at Montreal?

A. From a layman's view, I would say yes, there seem to be sufficient.

Q. And you would agree, I am sure, that there is adequate Canadian flag tonnage available?

A. I am not sure about that.

Q. You have not been reading the paper?

A. The last note I had was that one ship service was being cancelled.

Q. I asked you if there was adequate Canadian flag tonnage?

A. And I told you I was not sure and you asked me if I had been reading the paper and I said yes.

Q. Now, let us take B, that is Vancouver, is there an adequate port at Vancouver?

A. As far as I know it is adequate.

Q. Is there adequate wharves and docks at Vancouver?

A. From a layman's standpoint I would say yes.

Q. And in between Montreal and Vancouver there is the Panama Canal between North and South America. You know that too?

A. Yes, I understand that.

Q. Does Alberta say that the Panama Canal is adequate to handle the shipping that might travel between A and B?

A. That is one of the things we did not inquire into, Mr. Sinclair.

Q. You have no views on that at all?

A. I presume it is.

MR. FRAWLEY: That Munson-Clark ship is not over-taxing its facilities.

MR. SINCLAIR: I am talking about the facilities irrespective of any particular ship. Mr. Frawley has made enough jury addresses.

MR. FRAWLEY: I am away behind you.

MR. SINCLAIR: It is the first time. Am I correct

Mr. Harries, that Alberta does not know whether there are adequate facilities or not at Panama to handle ships?

A. I think I said, Mr. Sinclair, that I had not studied the case but as far as I know certainly they are adequate.

Q. Now, do you know there have been four movements between Montreal and Vancouver this year?

A. I couldn't be sure of it.

Q. Now what do you think, Mr. Harries, is the reason why there is not more ships in the trade between Montreal and Vancouver?

A. I have no idea.

Q. Now, would you tell me, Mr. Harries, whether Alberta would agree with this statement:

"Rail carriers should take the initiative in revising their rates to meet actual or threatened competition by other carrier agencies"?

THE CHAIRMAN: Who says this? What are you quoting from?

MR. SINCLAIR: I am quoting from the next line in Memphis Oil Case that the witness put on the record yesterday.

THE CHAIRMAN: What is the case?

MR. SINCLAIR: Memphis Oil.

THE CHAIRMAN: An American case?

MR. SINCLAIR: Yes, 218 I.C.C. 106 at 110 and it was put into the record yesterday by the witness.

THE CHAIRMAN: Is that case decided in the light of the declared policy of Congress that both water and rail traffic should remain in vigour?

MR. SINCLAIR: Quite so.

THE CHAIRMAN: Therefore, the one should not be allowed to eliminate the other?

MR. SINCLAIR: No.

THE CHAIRMAN: And in the light of that policy the Commission said that it was the duty of the railway to foresee and meet any actual or threatened competition by water. I think that is just what you read. Will you read it again?

MR. SINCLAIR: "Rail carriers should take the initiative in revising their rates to meet actual or threatened competition by other carrier agencies".

The language is not restricted, my lord.

THE CHAIRMAN: No, but I do not know whether that case was decided before or after the Congress policy was declared to be that this competition ought not to go so far as to allow one carrier to eliminate the other.

MR. SINCLAIR: It was decided in 1936.

THE CHAIRMAN: This case?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Then I presume that whatever they state there must be subject to that declared policy of Congress.

MR. SINCLAIR: Well, I am asking Alberta's witness, my lord, if Alberta agrees with that statement that "Rail carriers should take the initiative in revising their rates to meet actual or threatened competition by other carrier agencies".

THE WITNESS: Yes, in general I think that would be correct.

Q. Now, I would ask you, Mr. Harries, to turn to your illustration which you term "Figure 4" at page 4 of your brief and this is the example that in your evidence you referred to as "Long-and-short-haul discrimination arising from market competition"?

A. Yes, correct.

Q. Now it results when, to use your illustration or figures;

"When a railroad having a longer mileage is competing at a common point with a railroad having a shorter mileage to that common point"?

A. From two points of supply, yes.

Q. Which are not served by the two railways but only by one?

A. Yes.

Q. Now, can you give me any example where this type of rate structure, where the longer mileage railroad meets the rate of the shorter mileage railroad, where any place in Canada that exists today?

A. I would think that that would be an element in some of the rates which are made from Eastern Canada to Vancouver to meet competition from points near to Vancouver in the United States.

Q. Now do you know that there are any examples like that?

A. I indicated this salt example the other day. It is extremely difficult for me to get those, Mr. Sinclair, because of the fact that the rates are published as competitive and not necessarily market competition.

Q. Well, do you know of any example where both the producing point and the consuming point are in Canada where there is that type of discrimination today?

A. No, not off hand I couldn't tell you of one, Mr. Sinclair.

Q. Well, I am instructed, my lord, that there are none. So that we will now consider the case where the Canadian railroad having a longer mileage is competing with the American railroad which has a shorter mileage.

A. I may say, Mr. Sinclair, that the same thing would apply on different rate levels to some extent. That is, the mileages may actually be the same but if you had different rate levels you would still have this kind of market competition, because it really is not the mileage so much as the actual cost of getting into the market.

Q. Do I take from your answer that that may be a way where you have in mind there is some difference in Canada on account of different rate levels that the railways have been assisting a further away market to get into a market which is closer to a producing centre?

A. I said in evidence in chief that it seemed to indicate to me that basing the transcontinental rates on the American rate structure and having regard to the competition which you get from Britain and so on at Vancouver, that that may be an element in it.

Q. Let us keep to Canada and fix up Canada first and then we will deal with Britain and United States later. Do you know where there are any differences in rate levels which result in discrimination, where both the producing points and consuming points are in Canada? You said you did not know where there were any in mileage. Now, do you know any where there are rate levels?

A. No, I do not off hand.

Q. Let us take the case first of Great Britain. I ask you to assume that they manufacture a sewer pipe in England and they also manufacture sewer pipe in Hamilton, and that there is a market for sewer pipe in Vancouver and the English manufacturer transports his sewer pipe from England via the Panama Canal to Vancouver, and the Hamilton manufacturer is trying to sell his sewer pipe in the Vancouver market in competition with the English manufacturer. Now, is it the position of Alberta that

railroads should not be allowed to give assistance to the Hamilton manufacturer in supplying the Canadian market for sewer pipe?

A. No, our position is that providing the railways show to the Board in conformity with these five clauses we have set out here, it would be quite all right.

Q. We will take the example that the railways are in the situation we have given to you and they will not publish the Hamilton-Vancouver rate to Calgary because there is no competition there, in their view, but they cannot satisfy the tests in your proposed legislation?

A. Then that is just too bad.

Q. Then the position of Alberta is that the railways would be left with the alternative of applying a competitive rate to the intermediate point, Alberta, or withdrawing the competitive rate entirely. Is that correct?

A. Or raising the competitive rate to the point where they could meet these five requirements. That is essentially it, Mr. Sinclair.

Q. Even though they could not get enough facts to take it beyond this good business judgment that I was putting to you and put stuff to a matter of proof?

A. That is right, even though they could not.

Q. Now, I take it that Alberta would support the proposition that every reasonable assistance should be given to Canadian manufacturers meeting Canadian requirements?

A. Oh certainly.

Q. Now, I want to take a practical example. I think that you mentioned water competition from California in your evidence in chief in the Vancouver market?

A. Or rail competition, yes. I don't think I mentioned water competition; it could be though.

Q. You assume with me that there is water

competition?

A. I will assume that there is water competition between California and Vancouver?

Q. And that there is a market in Vancouver for glass bottles that are manufactured in California and they are also manufactured at Redcliff, Alberta. Now, the bottles that are manufactured by the Dominion Glass Company who are at Redcliff - are they not?

A. Yes.

Q. The bottles manufactured by the Dominion Glass Company at Redcliff, Alberta, cannot compete with the bottles manufactured in California and moved by water to Vancouver unless they receive a competitive special commodity rate. We will make that assumption?

A. Certainly.

Q. And so the railway publishes, after exercising good business judgment, the level of competitive rate that they think is necessary to move the traffic and the traffic does move. Now, your legislation comes into being. Under those circumstances, before the bottles could move from Redcliff, Alberta, to a distillery at Marpole, B.C., we will say, the railroads would have to go to the Board and produce evidence that would satisfy five tests which you have set out in your proposed legislation. Is that correct?

A. No, as a matter of fact it is not, because you forgot to assume one other thing. Assuming that there was long-and-short-haul discrimination somewhere between Medicine Hat and Marpole -

Q. All right, we will put that in if that is going to help you.

THE CHAIRMAN: We will adjourn now.

At 12.55 o'clock the Commission adjourned to meet again today at 2.45 p.m.

AFTERNOON SESSION

Thursday, December 8, 1949.

MR. SINCLAIR: Q. Before adjournment, Mr. Harries, we were discussing market competition and long and short haul discrimination. The example I was discussing with you was bottles from Redcliff, Alberta, to Vancouver, competing with bottles from California, water movement to Vancouver, and where a competitive rate did not operate to the intermediate point such as, for instance, Calgary, or any other intermediate point.

Now, in that case if the railways felt that they did not want to go to the expense, or if they thought that they could not go beyond good business judgment in supporting the competitive rate that they put in, would Alberta leave to them only the alternative of withdrawing the competitive rate or publishing it to the intermediate point?

A. If the railways could not prove these five principles that we have suggested in the revised Act, then they would not be able to create long and short haul discrimination by the publication of that rate.

Q. Do I take it that you, on behalf of Alberta, suggest that the Dominion Glass Company at Redcliff, or the people of Redcliff or Medicine Hat suggest that the railways, by legislation, be faced with these rigid tests that Alberta is proposing, before they are enabled to publish a special commodity rate to British Columbia points?

A. We are suggesting that when long and short haul discrimination is created they must meet these tests.

Q. But that is not the question I asked you.

MR. FRAWLEY: I think, perhaps, the question is

one for me. I take the responsibility of advancing this on behalf of the Province of Alberta.

MR. SINCLAIR: Q. I ask you, Mr. Harries, if the Dominion Glass Company, or the people of Redcliff or Medicine Hat would be in support of the railways being faced with the rigid regulations that you are proposing in your new section 314-A?

A. It is the submission of the Province of Alberta.

Q. Do you know whether the Dominion Glass Company or the people of Redcliff or Medicine Hat are in favour of these rigid regulations being put in the statute?

A. I do not know whether they are in favour of what you term "these rigid regulations", no.

Q. What I term as rigid regulations is your proposed section 314-A.

A. That is what you term "rigid regulations".

Q. Yes, so I take it that you do not know whether the Dominion Glass Company at Redcliff or the people of Redcliff or the people of Medicine Hat would be in favour of that legislation or not?

A. No.

Q. On page 16 of your brief you refer to the Eastern Canada Preserved Goods Association case, which was reported in 1928, in 35 C.R.C. 179; and you quote an extract from page 181. And you have emphasized certain parts of that judgment; that is, you have emphasized:

" . . . and the Board makes no dissent from that course even if it seems doubtful whether such rates be in themselves sufficient for the railway companies to earn a fair return."

Am I to glean from your emphasis in that extract that

you are of the view that the railways are free to make competitive rates, even though they are not compensatory?

A. I am afraid I could not interpret what that language means, Mr. Sinclair.

Q. I see. So actually it does not support any of your propositions, and therefore we can stroke our pencils through it.

A. No. I think it is one of the cases in connection with this matter which is of interest.

Q. I see, even though you do not make any point out of it. Now then, on page 18 of your brief you quote from the reasons of Deputy Chief Commissioner Garceau, given at page 310 of the case of Gainers Limited v. Canadian Freight Association (1935) 43 C.R.C. 309, and the extract which you have in your brief from Mr. Garceau's judgment is taken from page 310. Now, towards the end of that extract I find:

"In view of its powers and the principles which ought to govern in the administration of the Act, and having regard to the fact that the railways have not met their statutory obligation of disproving that the lower toll or difference in treatment does not amount to an undue preference or an unjust discrimination, the railway should be directed to publish rates. . ."

That would be to the intermediate points. Do I take it you would agree with me that the effect of the extract from Mr. Garceau's judgment would be that the railways would, on proof of a difference, have to automatically publish a competitive rate to the intermediate point?

A. "On proof of a difference"?

Q. On proof of a difference between the rate published to the destination point as compared with the

rate to the intermediate point?

A. On saying that there is a difference between these two rates?

Q. Yes.

A. I am sorry.

Q. That automatically that was proof of unjust discrimination, and the railway should be obliged to publish the low rate, the competitive rate, to the intermediate point?

A. You are asking me whether I think that is what Mr. Garceau meant when he said that.

Q. Yes.

A. I am afraid I could not say.

Q. Then what do you think that the extract proves?

A. I think the first thing it proves is that Mr. Garceau had a different idea from the majority in this particular case.

Q. I see; and the majority found that there was no reason why there should not be a higher rate to the intermediate point than there should be to the destination point?

A. That is correct, yes.

Q. And the only thing you are using this extract for is that there happens to be -- that Mr. Garceau happens to disagree with the majority of the court. Is that right?

A. Yes. We noted what the Board said up above.

Q. You are not suggesting that the majority judgment was wrong or that the dissenting judgment is right?

A. Not necessarily.

Q. Not necessarily?

A. No.

Q. Well, you either are or you are not. Isn't that the situation?

A. Our position is that these several things should be proven by the railways. Now, if this judgment took place in the absence of this particular proof, I might say yes, it was wrong.

Q. I am trying to get what you took out of this dissenting opinion, why you have gone to the trouble of producing it in extenso practically, at this page of your brief, and what was the purpose of it?

A. The purpose was, I think, simply to show that there was a different idea on this, held by Mr. Garceau.

Q. Do you think that his idea, as you put it, is the idea that should prevail?

A. Well, I think that if what he says, if in his opinion the essential facts submitted in support of the plan are not contradicted by the railways, then they must be considered as proof.

Q. If the essential facts are that there was a higher rate to the intermediate point than there was to the destination point, and that was proven already, will you keep going?

A. The fact that the rate was unreasonable, not merely that there was a difference.

Q. He says that in view of the rate coming in, in view of that difference having been proven, therefore the railways must publish the rate to intermediate points. That is the only way I can interpret that thing. And I ask you if the reason why you produce that extract is because that is the position of the Province of Alberta?

A. Our position is that the facts must be proven by the railways in connection with these long and short haul departures.

Q. You think that Mr. Garceau's judgment in this Gainers Limited case is an authority for the position that you are advancing to this Commission?

A. Oh no.

COMMISSIONER ANGUS: The word "disproving" must be a slip for proving; "disproving that. . ."

MR. FRAWLEY: Have you got the citation, Mr. Sinclair?

MR. SINCLAIR: No.

THE WITNESS: I think that would be the correct word, sir.

COMMISSIONER ANGUS: Q. Are there not too many negatives in that sentence?

A. I think there might be, sir.

MR. FRAWLEY: I am sorry. We will send for it and try to check it.

MR. SINCLAIR: Q. Can we say that Alberta does not want any rule or any statute or any recommendation that a competitive special commodity rate should automatically operate as a maximum to intermediate points?

A. Yes. I think that would be fair.

Q. And if the reasoning -- that is all that Mr. Garceau is saying, then -- that is not in support of your proposition?

A. If that is all Mr. Garceau is saying.

Q. But you have it in there, and you do not really know how it supports your position.

A. We tried to be fair about this thing and just bring in the cases, not just the ones which supported us.

MR. FRAWLEY: We review the cases.

MR. SINCLAIR: I wanted to know what use you make of the cases you brought forward. I do not know why you cited them all unless it be for the sake of making a big brief.

Q. Would you mind taking the proposed legislation which has been submitted to the Commission by Alberta, and I shall ask you to clear up one point. Would you look at subsection 5 of the proposed section 314-A of the Railway Act of Canada: "The carrier can show reasonable expectation of improved net earnings as a result of charging the competitive rate."

Now I want you to assume with me that the railways have a rate in existence and that it is a normal rate; there is no competition and they are just charging a just and reasonable normal rate.

A. Yes.

Q. Then one day the traffic officers for the Canadian Pacific find in the newspaper an advertisement to the effect that starting one month hence, a ship line will operate to transport goods between the origin point and the destination where the railways now have this normal rate that I asked you to assume.

A. Yes.

Q. Now, when do you think the railways should publish the special commodity competitive rate?

A. I think they should publish that rate, and we are assuming that it creates long and short haul discrimination.

Q. Yes. That is what your section goes for.

A. I think they should publish the rate after they have gone to the Board and shown that there is active and compelling competition and have shown these other

four things we have mentioned, provided that the Board may grant them the right to publish that rate immediately, subject to hearing, if on the surface of it the Board is satisfied that these five things will in fact be proven.

Q. I see.

A. So that they would not be tied; you would not have the Board go through the old procedure before they published the rates and met the competition that is there.

Q. Let us take each of your five tests under that situation; and when you say they should go before the Board; dealing with test No. 1, the facilities for this water movement are all there a month before the ship starts to operate. Would that cover your active and compelling competition there in subsection 1?

A. No. It would have to be active and compelling in the sense that there is a reasonable likelihood of such movement taking place if an adjustment in the rates is not made; that is, that the competition is real and not simply that the facilities are there for the competition.

Q. Therefore the advertisement in the paper now will read: That a month from today the ship will operate at X cents, which is the railway rate minus some amount. Now, that rate being known, the ship rate thus being known one month in advance, they are advertising that they will carry those goods by water, let us say, through the Panama Canal from St. John, to Vancouver. All the facilities such as wharves, docks and harbours are at St. John; then there is the Panama Canal, and all the necessary facilities such as wharves and docks at Vancouver; and they have this advertisement

in the paper. When should they publish the rate? Not until the Board has given its approval?

A. I think I indicated, Mr. Sinclair, that you would go to the Board and show these several things, and they would then either grant you temporary relief or permanent relief when you have proven those things. That is all.

Q. Suppose we have gone to the Board and we have produced to them this advertisement and we start first by proving that the facilities are there. And then we have to meet your test No. 1, unless I have that advertisement and just had the facilities without any knowledge that the ship is going to run; you told me, I think, that you would not agree that it would meet your definition.

A. There has to be more than an imaginary competitive situation.

Q. I am not talking about an imaginary one. I have got one where there are all the facilities.

A. You mean the port facilities?

Q. All port facilities, all questions of tonnage; there is no difficulty about that; and there are the ships to carry it.

A. That is different. If you have got the port facilities and the ships, and someone wants to operate the ships and can do so at a price which is competitive, you have got, in my submission, pretty well along the way of proving there is active and compelling competition.

Q. You say I am only "pretty well on the way". Do you underline the words "pretty well", or just throw them in as part of the statement?

A. They are just part of the statement if you can satisfy the Board.

Q. I am just trying to test your legislation.

A. What we mean is: If you can satisfy the Board that there is this competition, then you have satisfied subsection 1 of this revision that we contemplate.

Q. Under subsection 2 I am going to assume that it is the good business judgment of the railways which would not have them consider putting in a competitive rate unless it was compensatory, and I am going to ask you to assume with me that the good business judgment of the railways is satisfied, so we won't have to ask you that. Now, subsection 3, the rate to the intermediate point is just and reasonable, and starting on the assumption that the rate throughout be just and reasonable, there will be no question under subsection 3. Now, I must ask you to assume with me that the good business judgment of the railway officials would properly satisfy subsection 4. Now, I am faced with subsection 5, where I have -- before this shipping has started to move -- where I have a normal rate and want to put in a competitive rate at exactly the same rate; so taking into account differences which would enable me to get the traffic against this competition, how am I going to prove -- and I say "prove" -- the net reasonable expectation of improved net earnings as a result of the competitive rate? Can you tell me how I can prove that?

A. Yes. I think I can explain to you what we mean.

Q. No, I want to know how we are going to prove it. There is a duty, there is an onus on the Canadian Pacific to go before the Board and prove it; there is a statutory onus now.

A. You are faced with the requirement of showing that there is a reasonable expectation of improved net earnings as a result of charging a competitive rate rather than not charging a competitive rate and letting the traffic go to the water.

Q. No. I had a normal rate there, and I have got to prove that the competitive rate which I am proposing to publish -- and this is before the shipping starts to sail -- is going to improve my net earnings.

A. Improve your net earnings over what they would be if you let the traffic go to the water.

Q. How am I going to prove that?

A. How are you going to prove that?

Q. Yes, under the wording you have got in there now.

A. I explained to you what that was.

Q. This is legislation, Mr. Harries. I have got to take the words of the statute. If you want to put a qualification in it, then subsection 5 would have to be amended. This is legislation I am dealing with. I cannot be loose in my language in dealing with legislation.

A. As I understood it, the proposed legislation we put here is just a draft and we will explain our position. Then I presume if there is something that is not clear, once it is made clear it would be altered. I explained to you what we have in mind there. If this does not fulfil it.

Q. You are not going to take the responsibility for the strictness and the rigidity of the language which is in this section. Is that right?

A. The general intent is certainly; I mean, you have me at a disadvantage because, after all,, this is a legal matter, and Mr. Frawley would probably be the

man to ask about it.

Q. But you are speaking of Alberta and I ask you to accept my interpretation of the legislation, and I say that I am faced with these words: "Expectation of improved net earnings"; and I say to you that I thought about it and I cannot see how I can possibly satisfy that test.

A. I am trying to explain it to you, as to what we mean. If there is a difference between the wording of this and the interpretation you and I are putting on it, I would be glad to explain our interpretation from Alberta; and if it requires rewording, that is something which could be done, because this is not a statute.

Q. Can you tell me how this did not intend? You are talking about the good business judgment that the railway officials use in handling subsection 2, let us say.

Q. Well, I pointed out before that section 2 and section 5 are not the same thing at all.

Q. That is what I am coming to. I am just trying to see.

A. Well then, could I give you an example of that? An example of what we have in mind, would that be satisfactory?

Q. We will listen to you.

A. What we have in mind is: Suppose you have a rate, a competitive rate, and there is more competition and you want to lower it. You are faced with the necessity of either lowering one or losing some of the traffic. You can lower the rate and still have a compensatory rate. But as a result of what may be termed collateral losses -- and those collateral losses arise because of the fact that when you reduced the rate

to retain part of the traffic which you are going to lose in the absence of putting in that lower rate -- other than that rate, the lower rate applies not only to that segment of traffic but to all the traffic which would ordinarily move at the higher competitive rate, or even at the normal rate. So there is a problem there of the effect upon your total earnings which is, in a sense, aside from the compensatory nature of the rate itself. That is what we have in mind there.

Q. Can you tell me how I am going to, in advance, on behalf of Alberta -- could you tell the Canadian Pacific how, in advance, they are going to determine a reasonable expectation of improved net earnings, so that they can decide whether or not to publish the rate a month in advance of this shipping, let us say, on the basis that you put forward? This is what you call collateral losses?

A. There would be a number of considerations, Mr. Sinclair, such as the amount of traffic which now moves on the normal rate, the percentage of actual traffic which it would be possible for the ships to carry; the percentage of traffic which at any particular level of rates the ships will carry, and considerations of that nature.

Q. I want to deal with this legislation, and I have got to prove it.

A. You do not need to prove it. You have to show a reasonable expectation. That is all.

Q. Prove a reasonable expectation of improved net earnings. I will ask you if you thought that does not really amount to the question of good business judgment by experienced traffic officials?

A. I think that it would take an experienced traffic official to show this. I know the railways have many of those, so it is just part of the ordinary business.

COMMISSIONER INNIS: Have you brought out the difference between No. 2 and No. 5, or did you just assume that No. 5 was rather inclusive of No. 2?

MR. SINCLAIR: I cannot for the life of me, Dr. Innis, see how No. 5 does not include No. 2. I cannot see the difference in them, and I am quite content to leave it the way that the witness has left it, that it is a matter of good business judgment.

COMMISSIONER ANGUS: I thought the witness' explanation was, that 2 does not include 5, but that 5 does include 2.

THE WITNESS: Yes, 5 does include 2.

MR. SINCLAIR: Q. So we have four tests now instead of five?

A. No, 5 includes 2, but 2 does not include 5.

COMMISSIONER ANGUS: Well, is 2 necessary?

MR. SINCLAIR: Q. It is unnecessary, isn't it, Mr. Harries?

A. I am afraid I would have to think about it.

Q. We have been thinking about this for many months, and we suggest it is unnecessary, and we suggest the whole proposed amendment is unnecessary.

A. You are suggesting that?

Q. Yes.

A. All right.

Q. You do not agree with me?

A. No, of course, I do not agree with you.

Q. You do not agree with that?

A. No.

Q. And you are prepared to interpret this legislation in such a way as to impose this rigid control rather than have the railway continue to exercise good business judgment in meeting competitive situations in long and short-haul problems? Does that properly sum up the Alberta position?

A. We want this new Section 314A put into the Act.

Q. Well, what is your answer?

A. Well, our position is that we want this put into the Act.

Q. You want this rigid control rather than having this problem of long and short-haul discrimination left to the good business judgment of the railway; is that the position of the Province of Alberta properly summarized?

A. Yes, I think that might be a way of putting it.

MR. FRAWLEY: Are you accepting Mr. Sinclair's usage of "rigid control" to describe this situation?

A. Well, I do not think it is rigid.

MR. O'DONNELL: It all depends where you are standing when you look at it.

A. That is right.

CROSS EXAMINATION BY MR. BRAZIER

Q. I have one or two questions. I think Mr. Sinclair has covered the field fairly well, as far as I am concerned. Looking at the proposed amendment to the Act, the first criterion you state there is "active and compelling competition". Now, I presume from the use of those two adjectives that you want more than just competition?

A. We want more than hypothetical competition, yes.

Q. You want more than competition; I am not speaking of hypothetical competition.

A. Well, there are so many kinds of competition. We want this particular kind of competition as opposed to -

Q. What does that kind mean; what distinction are you trying to make there; is it between actual competition, potential competition or hypothetical competition, or what exactly do you mean by those two words?

A. Well, we mean that the phrase "active and compelling competition" as used in our submission refers to a competitive situation which is real and not imaginary, and we would say active competition exists when there is a competitive movement or when there is a reasonable likelihood of such a movement if an adjustment in rates is not made to forestall it.

Q. Would you be satisfied by the use of the word "real" competition there?

A. I do not know that - I would have to think about it to see if there is any difference between them - offhand it does not occur to me that there is any difference between real competition and active and compelling competition.

Q. Well, the word "active" implies that the competition is active at all times, operating at all times, doesn't it?

A. Well, it means, when there is discrimination, that there is active competition.

Q. So you are eliminating potential competition?

A. Yes, in the sense that it is merely potential, yes.

Q. Would you say that an actual movement by water is necessary?

A. No, we just said that, first, there may be a competitive movement, or if there is a reasonable likelihood of such a movement -

Q. Well, that is potential competition, thought, isn't it?

A. No - well, it depends how you define the word "potential".

Q. How would you differentiate between potential and

likely competition?

A. Well, potential competition might exist when you had water for a ship to sail on, although there were no wharves and no docks and no ships.

Q. You would think under those circumstances that it was potential competition?

A. Yes, there is potential competition there.

Q. Now, Mr. Harries, are we in agreement in saying that these so-called transcontinental rates are, in effect, competitive rates?

A. Yes, they are published as competitive commodity rates.

Q. As I understand the proposal of the Province of Alberta, it is to set up a different method of handling transcontinental rates as against other competitive rates?

A. No, I do not think that that is quite correct, Mr. Brazier. We say that in all cases where long and short-haul discrimination is practised that this new section which we are suggesting is operative.

Q. Then you are suggesting that competitive rates that are affected by long and short-haul discrimination should be judged upon a different basis than other competitive rates?

A. Slightly different, yes.

A. Are you making any suggestion as to how the other competitive rates should be dealt with?

A. Yes, Mr. Darling presented our case on that several days ago.

Q. Then you are in disagreement with Mr. Moffat of Manitoba who, in answer to a question that I put to him, said that they should be governed by the same criterion.

A. Well, I think our proposals in both instances are substantially the same, sir; our proposals are substantially

the same in both instances.

Q: Well, he was quite willing to take out of his brief the "Active and Compelling Competition" phrase that he had used.

A: Well, if he took it out, we are certainly going to leave it in.

Q: In that regard you are in disagreement with him?

A: Well, there is a difference, yes, sir.

Q: Now, ⁱⁿ the section that has been suggested by Alberta, competitive tolls, a new section 313A, you speak of competitive tolls?

A: Yes.

Q: At all times, to meet certain requirements?

A: Yes.

Q: Now, I presume, if you adhere to the policy of treating competitive rates affected by the long-and-short-haul discrimination differently, you would have to amend Section 313A by inserting the words, "excepting that type of rate".

A: No, as I say, I do not think there is any - I do not think there is any difference. This is specifically added, and I think it is quite in line with the previous section.

Q: There is just one other fact, Mr. Chairman, that I wish to mention. When Mr. Harries was on the stand on November 30th, reported in Volume 56, he made the statement at Page 10827,

"that there is a rate on salt from Windsor to Vancouver and we would maintain that that rate is a market competitive rate because of the fact that you cannot move salt in vessels or steamer or you cannot

move them from Windsor to Vancouver."

I questioned him about that at Page 10896, where I said to him:

"Q. There is just one other statement I wish to ask you about. This morning you stated that salt cannot be moved by water, and I wondered upon what basis you made that statement?"

His answer was:

"A. I think I said packaged salt cannot be moved by water. My understanding is that on a haul from Eastern Canada through the canal up to Montreal" -

I think that should be "Vancouver" in the transcript -

"that the packaged salt would become solidified in the packages."

After Mr. Harries gave that evidence, Mr. Chairman, I inquired from Canadian Industries Limited on this problem, and I have received a letter dated December 2, 1949, and I would like to read it into the record. It is addressed to myself, and it states:

"The following question has been submitted to us - 'Can salt, packaged, with or without 'Cellophane', be shipped through tropical waters, for example the Panama Canal, without suffering deterioration?' - and the writer has been instructed to address our answer to you.

The Salt Division of Canadian Industries Ltd. has had over twenty-five years experience of shipping packaged salt, both with and without 'Cellophane', to New Zealand via Eastern Canadian ports and the Panama Canal

and in that time have suffered only trifling damages in transit, none of which could be ascribed to the fact that the route of shipment lay through tropical waters. We have had additional, though less extensive, experience with shipments to Caribbean destinations which has been of exactly the same character.

The answer to the question that has been asked is therefore, on the basis of our experience, entirely in the affirmative.

Yours very truly,
CANADIAN INDUSTRIES LIMITED

(Sgd.) N. C. Hobson

Division Manager,
SALT DIVISION."

(Page 13075 follows)

THE WITNESS: May I say, Mr. Commissioner, that my understanding in what I was alleging was that these two-pound packages of salt could not be shipped from Sarnia to Vancouver because of the fact that they solidified in the packages. Now, I do not know whether Mr. Brazier has received an answer to that or not, but that is my contention, and, as I told him, that is what I was informed of.

MR BRAZIER: Q. When you say it is your contention, Mr. Harries, it is just what somebody had told you?

A. Just what a salt man had told me, yes.

Q. Apparently somebody with considerable experience in making actual shipments?

A. I am pointing out that my statement was that these packages -- and what I meant were these two-pound packages moving from Montreal or Sarnia to---

Q. You try to make a distinction---

A. To Vancouver.

Q. Are you trying to make a distinction in the size of the package?

A. I am trying to simply say what I had in mind, that is all.

Q. Actually, Mr. Harries, your own brief shows that a considerable amount of salt is shipped or has been shipped from Montreal to Vancouver, has it not?

A. Not in two-pound packages.

Q. It does not describe what kind; but salt is actually shipped?

A. They can ship it in bulk, I do not think there is any doubt about that.

Q. Do you know whether that shipment shown in your brief was packaged or bulk?

A. They did not tell me, no.

MR SHEPARD: Mr. Chairman, I have no questions to ask the witness, but I would like to put on the record a comment on one statement in the second volume of the C.P.R. brief. It appears at the bottom of page 126 of Part II of the Canadian Pacific brief, and the statement is this:

"It may be pointed out in conclusion" -- that is, in concluding their reply on the long-and-short-haul brief of Alberta --

"that the Province of Manitoba does not support the position of Alberta."

Now, it may be more, Mr. Chairman, a matter of argument, but I did think it was appropriate to have on the record the reference to the Manitoba submission on transcontinental rates, which starts on page 121 of our printed submission, and it enumerates three criteria, and our technical advisers advise that they can see no conflict between those three criteria and the five put forward in Alberta's brief; and I am instructed to say that we are supporting Alberta's position on this brief.

MR BRAZIER: Mr. Chairman, I would like to call my learned friend Mr. Shepard's attention to the fact that the witness they put on the stand was only too willing to withdraw I think it is the third criterion. I think his statement to the Commission at that time was, "I am afraid we are out on a limb. We cannot justify it." I do not know whether Mr. Shepard is now reversing the statement that was made at that time or not.

MR SHEPARD: No, Mr. Chairman, I am not reversing that. I well recall Mr. Moffat's statement. I have not got the transcript here, but he is the technical adviser who has given me this information and instructed me to make this statement now, and, whether there are two or

three criteria, Manitoba does not consider that there is any substantial difference between the submission of Manitoba itself and Alberta.

MR SINCLAIR: There is one thing that I would like to have clarified also, Mr. Chairman, and that is whether Manitoba is now changing their submission at chapter 9, pages 11 and 12 of the mimeographed brief that I referred to this morning, where they placed the criteria for competitive rates as that the rates charged by the railways are sufficient to meet their out-of-pocket costs.

MR SHEPARD: No, we are not changing that.

MR SINCLAIR: Well, I say that that speaks for itself.

COMMISSIONER ANGUS: Mr. Covert?

MR COVERT: There are just two or three things I wanted to ask Mr. Harries. Perhaps I should address it to Mr. Frawley. I would like to have the position clear. I understand that in the early part of the 30% case Mr. Frawley seemed to be arguing that the transcontinental rate to Vancouver should constitute the maximum to all intermediate points. In other words, he contended that the Vancouver rate should carry back to the point where it met the normal rate. It did seem to me that what he was asking for in this brief was simply for more effective control of the water-compelled rates to Vancouver, and he would apparently allow intermediate tolls to be higher than the more distant ones, provided the railways prove that they have satisfied certain conditions outlined in the brief. Now, it seemed to me that there might be a shift in emphasis there, and I thought perhaps we could clear that up so there would be no misunderstanding.

MR FRAWLEY: Mr. Chairman, I am very glad to accept my friend's suggestion and make a brief statement at this

time. Certainly in Alberta for many years, sir, there has been a feeling that because of what has transpired in the United States in the territory immediately south of our province, and immediately south of the interior of British Columbia, there should be an equalizing of the port rates with the intermediate rates in Alberta, and I think that probably some of the business men who gave evidence in the 30% case and perhaps before this Commission made statements just more or less outright to that effect. If I have been guilty of any similar statements, simply saying that what we desired was a spreading back of the port rate, it was of course because we had perceived what the application of the fourth section in the United States had done in result, and I can give no better example of it, sir, than Exhibit 136, which I filed a few days ago, in which we find that the rate from Detroit, Michigan, to Sweet Grass, Montana, on canned goods in carloads is \$1.50, and we know that it is \$1.50 because it is \$1.50 to Seattle, to the port. Now, it is because of that sort of thing that we have said that we wanted the rate spread back.

Now, the considered position of the Province of Alberta today, as is exemplified by its brief and by the evidence of Mr. Harries and Professor Locklin, is that we wish to have introduced into the Railway Act a proper long-and-short-haul rule, with these powers given to the Board, and then, once that section is operative -- and I think I answered this question to either the Chairman or yourself or Dr. Innis yesterday or the day before -- we will then be content, whether it means increasing the port rate to our rate, lowering our rate to the port rate, or something in between. In other words, the elimination of the discrimination is what we think should take place, and we must

be perfectly fair about it. We will be content with whatever results from a due administration of this new rule which we have put forward as a suggested change in the legislation.

MR EVANS: I think that does call for some clarification, because you see Mr. Frawley has now said they want the discrimination eliminated. He does not, therefore, concede in his present statement that there can ever be any of this discrimination at the intermediate point.

MR FRAWLEY: My friend has misunderstood me.

MR EVANS: No; that is clear on the record.

MR COVERT: Let us make it clear, Mr. Frawley.

MR FRAWLEY: To make it clear, the section allows discrimination, sir; that is perhaps the way I can put it.

MR O'DONNELL: That is, your section.

MR FRAWLEY: It allows discrimination, as long as these conditions have been put forward to the satisfaction of the Board, and I think Mr. Harries himself used the expression -- once that has been done, I think, to use Mr. Harries' expression, you can have all the discrimination you like. That was the colloquial way in which Mr. Harries put it; he said just that from the box; I remember it, and that certainly is our position.

I hope I have made it clear, first to the Commission and to my friend Mr. Covert. I am quite anxious also that it should be clear to my friend Mr. Evans -- not quite so worried, but still I am anxious.

EXAMINED BY MR COVERT:

Q. Now, Mr. Harries, there are just, I think, two questions I want to ask you. First, my understanding is that you want the burden on the railways to prove such

things as, for example, the compensatory nature really of the rate, don't you?

A. Yes, sir.

Q. Now, I think the Chairman asked you yesterday if you were satisfied with the tests that had been applied in the United States to determine the compensatory nature; perhaps that may not have been his direct question, but that was what I understood he asked, and I believe you said that you were satisfied with those tests?

A. Yes, sir, that is what I said.

Q. If there were not some simple tests that could be applied, it would seem to me that by this legislation you might effectively prevent the railways, or you might come in and argue every time the railway applied for relief under this section, you would be saying, "You have not proved that this proposed rate is compensatory," and it might be something that would be impossible for them to do. Now, I just want to be absolutely certain of Alberta's position on that.

A. Well, our position, sir, is that the procedures that have been used or the tests which have been used in the United States would be satisfactory here. We are not trying to set up an impossible proposition at all. We think that certainly they can show that these rates are compensatory and so on by reference to a few general tests in most instances.

Q. I think, since that question was asked you, we should find out generally -- perhaps I could better ask Dr. Locklin about this, but I want to see if perhaps you can tell me what your ideas are. I believe there are three usual tests -- one, the percentage of the normal rate; is that one?

A. That is a test, yes, sir.

Q. And another is revenue per ton mile?

A. Yes.

Q. And another revenue per car mile?

A. Yes.

Q. Are those the three that are generally applied? Sometimes they apply one, sometimes two, sometimes the whole three?

A. I think, sir, that any answer I give you would just come from what Dr. Locklin has told me, so I would sooner leave that with him, if I may.

Q. Now, I want to get this clear; perhaps it may save some time later. Alberta does not say that they are wedded at all to the language of this legislation. I understand that in the main you have perhaps copied some of it from the Interstate Commerce Act and some, I think, perhaps specifically number 5, from one of the decisions in the American cases?

A. No, sir. We put forward this draft simply to put in concrete form what our proposal is in particular words and so on. It is the intent that we were trying to get across by putting this in, sir.

MR COVERT: That is all I have.

MR FRAWLEY: And you remember, Mr. Covert, that the Chairman has brought up the question of protecting existing departures, and we will have to make some---

MR BARRY: Mr. Chairman, since the provinces have expressed their opinion, on behalf of New Brunswick I wish to express opposition to the amendments especially as drafted. We are quite prepared that there should be some control of the railways, but not to the extent that they will be a prey for any competition that would take all their business from them, by requiring them to fulfil what appear to be the impossible conditions under section

314A as proposed, which will only result in another rate application for an increase, and we have had enough of those already.

PROFESSOR D. P. LOCKLIN, Recalled.

CROSS-EXAMINED BY MR EVANS:

Q. Dr. Locklin, I approach our little discussion with a great deal of diffidence, I may say, and I trust that you will make allowances for my lay thinking on these subjects. I want to discuss with you, if I may, some of this early history in the United States and the development of the legislation. The original section, which I think you said was enacted in 1887, was a section which, as it was interpreted by the Supreme Court of the United States, gave to the Commission no discretion to prevent the so-called intermediate point discrimination if the railways could show that there was in fact competition. Have I correctly stated that?

A. That is the way the Interstate Commerce Commission interpreted those court decisions.

Q. Yes. So that I think we understand one another, that the deficiencies in that legislation, which, as I think your brief puts it, and as the Interstate Commerce Commission is said to have put it, rendered the section a nullity?

A. Yes, sir.

Q. I suppose it would not be quite fair to say it rendered it a nullity?

A. That is somewhat of an extreme statement, perhaps.

Q. Yes. In effect it was a nullity, so far as it gave to the Commission a discretion to allow or

disallow, as they might see fit, intermediate point discrimination?

A. I think that is a correct statement.

Q. Now, have you compared the position under that early section of the Interstate Commerce Act with the legislation in Canada from the beginning?

A. No, I have not compared the Canadian situation with it.

Q. Well, if I were to suggest to you -- and I am not asking you to accept my interpretation, nor do I ask you to interpret it yourself, but if I were to suggest to you -- that there is a discretion here under the legislation, long-and-short-haul clause, in the Board, would that in your view not be a very material difference in the question as to whether the regulatory tribunal would look upon the matter as a nullity as far as they were concerned?

A. I do not know that I quite get your question, but I think that it would mean that your present rule is superior to the rule that we had between 1897 and 1910.

Q. Well, that is all I am suggesting to you, that there was one situation in the United States where the effect of the decision of the Supreme Court was to hold that the Commission was powerless once competition was shown, and that in this section -- and, as I say, I am not asking you to accept my interpretation -- if there was found to be a discretion here where there was not there, that would make a very material difference in the question as to whether the legislation could be considered a nullity?

A. Yes, I think that is correct.

Q. Now, I suppose that at the time when the Supreme Court had given its decision there were really a couple of principal alternatives when Congress had to consider what

they would do, and I suggest to you that the alternatives consisted of two principal ones: First, they could have said, we will give the Commission a discretion without requiring a substantive application by the railways for relief -- that is alternative number one -- or, secondly, they could have said, as they did say, we will give the Commission a discretion plus requiring a substantive application for relief?

A. I am not sure that I understand your first alternative.

Q. Well, I do not want to rush you; I want you to understand it. The two alternatives would be, first, to bring relief from the decision of the Supreme Court, the alternative might have been that the Commission would be given the broad discretion which prevented the matter being considered a nullity, without laying it down as a pre-requisite that the railways must go to the Commission and ask them for relief?

A. Well, the original Act contained a proviso that the Commission might in special cases grant relief.

(Page 13087 follows)

Q. Yes, but wasn't the decision of the Supreme Court to the effect that once a railway showed competition, then there was nothing that the Commission could do to prevent intermediate point discrimination? I am talking about the reverse view. You see, the relief is another matter. Have I made my point clear?

A. As I say that is the interpretation that the Commission put upon those Court decisions.

Q. And the proviso saying that the Commission could grant relief in special cases would be where the railway asked for relief?

A. No.

Q. But I am putting to you the other case where all that the railway had to do, according to the Supreme Court was to establish it was competition. They did not have to ask for relief?

A. My interpretation would be that a case of long-and-short-haul discrimination that could not be explained by competition, would have to have the approval of the Commission even in the period from 1897 to 1910.

Q. I quite agree with you. I think that is the real distinction between the point I am making and the point you are making. All I was putting to you was that under the original section where there was not a question of competition involved the railways could still get relief, but once there was competition they did not have to ask for relief and the Commission could not compel them to avoid this intermediate point discrimination?

A. I think that was correct.

Q. So that all I am saying to you is that in order to get over that difficulty Congress was faced with two principles. One they could have said "We will give the Commission the discretion to disallow these intermediate

point discriminations" without requiring also that the railways first come and ask them for relief, or, secondly, they could have given them the discretion plus the additional requirement that railways first ask for relief before they publish the rate. You see there are two alternatives there. Now then, what happened in 1910 was, that the pendulum swung from a point at which there was no discretion on the part of the Commission to prevent this discrimination, to a point which passed over the intermediate stage we had in Canada, to the ultimate stage which Mr. Frawley now espouses that there should first be a substantive application by the railways. I am just getting this language in its cubby-hole as it were.

A. I think that would be correct.

Q. Now then, if I might take a moment with you to expand your views on these figures which Mr. Sinclair was talking to Mr. Harries about; your Case No. 1 in your book at page 537 is your Case No. 1 corresponding with the first figure at the top of page 3 of the brief. That is the competition between railway routes for the smaller mileages and costs?

A. Yes, that is right.

Q. That is what you have got as figure 42 on page 537 and what you call "Unjustifiable long-and-short-haul discrimination"?

A. Yes.

Q. So that that form of discrimination is what your writing on the subject has condemned as unjustifiable. Now then on page 539 in figure 43, that is of your book, you will see, as I understand it, the kind of discrimination which is mentioned or which is found in Item 2 on page 3 and which the brief calls "Competition of a circuitous route with a direct rail route"?

A. Yes.

Q. Now then, that form of discrimination, I gather, speaking generally and subject to qualifications that must, of course, exist, is a kind of discrimination which you have generally approved in your writing on the subject?

A. Subject to quite a number of qualifications.

Q. Yes, I was going to explore those with you. But at all events you make a broad distinction in general terms between that form of long-and-short-haul discrimination and the kind that is dealt with in Case 1 on the previous page and at the top of page 3 of the brief?

A. I have got the pages mixed up here. Are you talking about the book or the brief?

Q. I am trying to get the book and the brief together. Case No.1 contained in Figure 42 on page 537 of your book, I have found to correspond with Item No.1 on page 3 of the brief, and Case No. 2 which appears in your book at page 539 in Figure 43, corresponds with Item 2 in the brief on page 3?

A. Yes.

Q. Now then, what I am saying to you is that, leaving you qualifications, that you make a broad distinction between the kind of long-and-short-haul discrimination as between a competition between rail lines having approximately equal length and costs and rail lines one of which has a direct route and the other of which has a circuitous route?

A. Yes.

Q. Now then, as to the qualifications, I assume that the qualifications that you have in mind are those that have been pretty generally recognized in the United States by the Commission; they are, that at least you must have some circuitry to come within your Case 2?

A. Yes.

Q. And that the Interstate Commerce Commission has roughly defined the necessary minimum security to come within Case 2 at 15%?

A. Yes.

Q. And then, depending on the mileage of the direct route, there have been differing maxima of circuitry to justify this form of discrimination?

A. That is right.

Q. And those maxima run from 70% on short mileages up to, say, 33% on the long mileages?

A. Yes.

Q. Then there are considerations of this kind; there are considerations, I suggest to you, which involve the question as to whether--and I suppose this is also involved in these percentages--as to whether it is economically desirable that you should have a wasteful transportation by an unduly circuitous route?

A. Yes.

Q. Now then, even that is subject to some qualifications as I imagine you would agree, that if you were to find that the direct route were unable to carry all the traffic offering, you might excuse a degree of circuitry rather than to put in a new line paralleling the direct line, and that is a principle that has been recognized in the Interstate Commerce Commission?

A. I don't think it has; I do not seem to recall a case of that sort.

Q. I take it from your book - I have not looked up all the cases, - but I take it from your book that that at least was acceptable to you?

A. Yes, it would be.

Q. And as a matter of fact, I was not quite clear whether this was also acceptable to you, although it may have

been acceptable to the Interstate Commerce Commission, that also some relief has been afforded under the circuitry rule, and despite the circuitry rule, to a weaker line that needed traffic in some cases?

A. Yes, by that we mean that in a figure like this one on 539, Figure 43, that if you imagined that the direct route in miles was a high cost route due to sparcity of traffic or difficult terrain or something of that sort, that the natural route and the low cost route might really be the circuitous route, the one that was circuitous in mileage, in which case it has happened that relief has been given to such a high-cost direct line to meet the competition of a low-cost or circuitous line.

Q. That is sort of the converse of the one I was putting to you, that you might have a circuitous route, a weak route, that needed traffic, or you might have a circuitous route, a low-cost route, and whether it was weak or not you might give relief to the high-cost direct route - sort of the converse of one another?

A. Yes.

Q. I just want to clear that up as a sort of generality. Now then, the discrimination which comes within your Figure 44 on page 542 of your book is, to all intents and purposes a discrimination which comes within the category shown in the Figure at the top of page 4 of the brief?

A. I think so, yes.

Q. And there, to speak generally and always subject to this declared policy by Congress, that form of discrimination meeting certain conditions is generally, you consider, justified?

A. If certain conditions are fulfilled.

Q. I am not asking you to give me an unqualified answer because there must be conditions, but I just want to eliminate from our discussion as many of these things as possible. Now then, when you come to the class of competition provided by this water route, there is one point I want to clear up with you. It was in 1910 that the pendulum of regulation, as it were, swung from the condition which produced the opinion that there was nullity, over to the point where the railway had to make this application and to satisfy the requirements, and it was at that time that two things happened - I should say three things happened - first, the Act was amended to provide that there must be this application by the railways for relief and, second, it had to be shown that the rates must be reasonably compensatory?

A. No, not so far as the statute was concerned. That came in the 1920 amendment.

Q. I am sorry ; you are quite right. I am misreading my own note. It was in 1920 that that question arose as to whether the rate should be compensatory so that in 1910 the big change was that this discretion was given and a substantive application required for relief?

A. Yes.

Q. And then in 1920 a second change occurred, that rates must be reasonably compensatory and that no effect could be given to potential competition?

A. Yes.

Q. And, three, this equi-distant clause?

A. It has since been repealed.

Q. Yes, I am going to come to that. Now, with regard to the matter of potential competition, I suppose you will agree that that gave some real trouble to the Commission?

A. Yes.

Q. As a matter of fact you did not quite see the soundness of that prohibition, did you?

A. I see the reason for it; there is some history behind that.

Q. I think probably this may bring it back to your mind. You felt that it would have been wrong to have had the word "potential" or at least to have potential competition allowed to the extreme but that you did think there was a little absurdity in-(I will read what I have from your book): "There is some degree of absurdity in a rule which encourages investment in waterways - ". I am reading from 552.

A. Yes, I see.

Q. "There is some degree of absurdity in a rule which encourages investment in waterways, docks, and barges for the purpose of bringing about a reduction in rail rates that cannot be lawfully accomplished until such investment is made"?

A. Yes.

Q. So that actually may I suggest this to you, that one of the difficulties with legislation and legislating for all sorts of things is that you sometimes tend to swing this pendulum a little too far and get too firm and rigid in your language and you do find that although the evil you are trying to remedy may be remedied, you have gone a little too far in the language you have used. Is that not what you mean in that paragraph?

A. Well, you can interpret it that way, yes. I would stand by this statement.

Q. I am not asking you to change it.

A. I would like to explain just a little bit about

about that, that there appear to have been a number of cases before the Commission before 1920 in which the request for relief from Section 4 was based on water competition when the water competition was pretty fanciful, and that is why Congress put this provision in the Act in 1920. The Commission has construed this about as liberally as it can in order to avoid the type of difficulty or absurdity that I have suggested might occur.

(Page 13099 follows)

Q. Yes, I think you and I are entirely in agreement on that. There was a little rigidity to those words prohibiting potential competition that led the Commission to press a little bit to get a rational answer to the problem that that language presented. Is this what happened: The Commission then held that actual movements were not necessary to establish actual competition?

A. Yes.

Q. In substance they said: If all the facilities of competition were available that satisfied the requirements of actual competition to be shown?

A. It perhaps requires, I think perhaps it involves, a little bit more than the existence of facilities. I think there must be a reasonable prospect that traffic would move if adjustments in rates were not made. That is, mere facilities might mean the existence of the ocean, or the existence of a river which, perhaps, needed the expenditure of some millions of dollars to make it useful.

Q. Are you expressing now your own view or the view of the Commission as it has interpreted that section?

A. I have forgotten now just what your question was which led to the comment.

Q. Whether the Commission had not actually found that actual movement by water was not necessary to make the competition actual; and I use the words to be found at page 552, that it is sufficient that the facilities for such movement are readily available.

A. Facilities, of course, mean I think a little bit more than the existence of a waterway and docks and so forth, but the existence of some people in the business of transporting goods by ship or barge who

would likely come into this business ---

Q. You would go this far: If you had a number of ships of the tramp variety floating about the world, sailing under the Canadian flag--they might^{not}/be engaged in coastwise shipping--floating around the world looking for cargoes, but deterred by the present transcontinental rate structure, that would be a facility which is available in conjunction with the water route facilities in operation; that would be a facility available, assuming there was a cargo offered.

A. I would think that was actual competition, unless the people engaged in this business were not at all interested in this particular movement.

Q. As to the equi-distant clause, while that is perhaps in the limbo of forgotten things, it is not quite. I thought we might discuss it, equi-distant clause which was added to section 4 in 1920, and which was a further limitation on this long and short haul discrimination.

A. Yes.

Q. And in substance, and I am not trying to get meticulous language, it prevented higher rates being charged to intermediate points on circuitous lines; it prevented higher rates being charged to intermediate points not to exceed those charged to the through distance by direct route. Is that the substance of it?

A. I do not believe you have stated it quite correctly. It is a very confusing thing to state.

Q. I was trying to get it down to a simple statement. Perhaps I could read it from your book. I shall read from page 552:

"It provided that when fourth-section relief was granted to a circuitous line competing with a direct line, higher charges should not be permitted at points at which the distances were not greater than the through distance by the direct route."

A. Yes.

Q. All I want to say about it is this: That the rigidity of it provided very considerable difficulty for the Commission when they came to administer it?

A. Well, it did cause difficulty. But the reason for its removal was not so much the difficulty as its unsoundness under certain conditions.

Q. At all events, in 1940 that clause was repealed?

A. Yes.

Q. Although in circuitous cases the Commission has given some effect to the principle of it?

A. In some instances it has imposed that condition, although it does not have to do so under the present law.

Q. Would it be fair to say that we start off this picture in the United States with this legislation and any reaction it has brought about by the finding of the Supreme Court, the pendulum has swung part of the way across and it is a little after across, and it is quite apt to fall downward a little bit because of the rigidities introduced by attempting to cover too much and too rigidly by legislation?

A. I think that is correct, but the picture it leaves is just a little bit misleading if you do not consider some of the proposed legislation in the meantime, which, at various times, Congress has rejected.

Q. I assume that Congress has had legislation all the way from extreme rigidity of adding to the regulations to the removal of all the regulations. And I assume that you and I would not want to explore all the bills that have been presented to Congress and to which Congress objected, for one reason or another?

A. Of course not. But I think it is only fair to make clear that at times there has been movement, a sentiment for an even stricter long and short haul clause than we have; and at times there has been agitation for further relaxation of what we do have?

Q. Yes.

A. Congress has rejected both of those demands to change the law.

Q. Well, as a matter of practical business, and having regard to the commercial necessities of the operation of utilities, I assume that it is part and parcel of your theory that there has to be discretion rather than rigidity in the regulatory legislation?

A. With some qualifications. It would take me some time to explain my views fully on that question, so far as transportation legislation is concerned.

Q. As between extreme rigidity and flexibility dealing with the discretion of the regulatory commission, would you not agree with me, speaking in general terms, that the discretionary matter is probably the most adaptable?

A. Yes; I would like to point out, however, that usually there is a movement from very broad discretionary powers, and then, as a result of experience in administering such broad legislation, certain principles evolve, and there is a tendency to put them into the

statute. And that is, anyway, what we did in 1920. And with respect to two of those changes in 1920 that are of that nature, they just grew out of the experience of the Interstate Commerce Commission in administering the Acts. Two of those stand. One was found to be too rigid a policy to write into the statute, and it was removed.

Q. Yes. Now, there is only one other type of competition I want to discuss with you. You have dealt with the question of market competition, and I think it is only fair to say that you have expressed some considerable doubt as to whether that kind of competition is economical and advisable.

A. It can lead to a great deal of waste in transportation.

Q. At all events, the Interstate Commerce Commission has permitted certain cases of relief against the operation of section 4 to meet market competition?

A. Yes.

Q. And I think one of the cases your book refers to is that of the mid-west producers trying to get to the market at New Orleans in competition with products brought in by the Atlantic seaboard to New Orleans by water?

A. Yes.

Q. Now then, in your criticism of market competition, do you distinguish between market competition from producers within a country and market competition from producers outside that country?

A. I have not any opinion on that. I have never made any such distinction. That gets you into the question of trade policy and so on.

Q. Yes. But as a practical matter, while we

continue to have two separate nations, each striving for nationhood and prosperity and increased production and so on, I would think you would go this far: That quite different principles might well be applied in approaching the question of market competition from foreign sources compared with the local producer?

A. That might be, yes.

Q. Now then, if I might for a moment turn to page 88 of the brief, that part of the brief for which you were responsible, you were speaking on this page of the transcontinental rate case in 1946 I.C.C. 236 (1917), near the bottom of the page. That case was heard in 1917 while the first world war was in progress, and the finding of the Commission which eliminated the then existing relief under section 4 was stated in language which you quote near the bottom of page 88 in this form:

"The Commission found that "the present service by water between the two coasts of the United States is infrequent, sporadic, and irregular'."

And since that language was used, I thought perhaps we might at least clear up some of the conditions, or some of the inferences which might be drawn from that language. I suppose what brought about the condition of infrequency and irregularity and so on was the fact that during the war the shipping was all in government service and had to go where the government required it to go; and if any movement by water inter-coastal took place, it would be a movement which was only filling in the ship's time while it was not on government service.

A. Yes.

Q. I was going to suggest to you if in peace time

you found infrequent, sporadic or irregular movement by water, there might be a very considerable difference in the view of your Commission as to whether that would constitute a reason for refusing relief to the railroads?

A. Yes, there might be some disagreement. It would be a difficult case.

Q. Yes. In one case the sporadic, irregular or infrequent movements are caused by the physical impossibility of having the ships to move. That is a different kind of irregularity and sporadic movement from the one caused by the fact that ships are just picking up the odd cargo wherever they can find it?

A. Yes.

Q. Now then, I have a matter that I want to ask you about. I notice some passages in your book, and in the light of some suggestions which were made here, I thought I would like to get your views. One of the provinces which came before this Commission made certain suggestions -- I want to be fair about this -- that the authority of the executive branch of Government over the Board of Transport Commissioners should be increased to the point where the executive branch of Government could override the decisions of the Commission. I wondered if you would agree with that suggestion?

A. Well, of course, that goes to the question involving the structure of your government and constitutional law, you might say.

Q. I do not want to get you into a political discussion, but I would like to get your views on that because of your experience in relation to regulatory tribunals and your other qualifications.

A. Speaking only of the situation in the United States, I would be opposed to such a suggestion. I

won't say that that necessarily applies in Canada.

Q. No, but I think we are in agreement that the legislative branch must always be free to pass legislation. We cannot take that away from them. But I think you and I also agree that a regulatory commission -- I am speaking now on a matter of principle, not nationally or anything else.

A. May I interrupt?

Q. Yes.

A. I think perhaps I misunderstood your first question when you spoke of the administration; did you speak of the executive, the administrative branch of the Government?

Q. The executive branch of Government having authority to override or to disallow findings of the regulatory tribunal, the administrative tribunal.

A. That is what I thought you meant. Then you began to speak about Parliament.

Q. I think you and I would agree that legislatures must always be available, must always be free to pass on policy by statute?

A. Yes.

Q. But I distinguish between the legislative branch of Government and the executive branch of Government.

A. Yes.

Q. And I take your answer to mean that while you agree with me that the legislative branch must always be free, yet it would be a bad thing for the executive branch to intervene in the findings and decisions of the regulatory tribunal which has the power of regulating railways and their rates.

A. That would be my position with my background of

American Government.

Q. I am only asking you as a matter of principle. I do not want to involve you nationally, and I do not want for us to get on the basis where anybody may think that you would speak one way in one country and another way in another country. But as a matter of principle, is it not a bad thing to have executive interference, that is Government executive interference, with tribunals which have the power of regulation over railways and their rates?

A. Yes, I think so, if you are speaking in terms of what we ordinarily think of, in terms of regulation, not in terms of promotional policy, or things of that sort with which our regulatory bodies do not have very much to do.

Q. If the railways apply for an increase in their rates, and the Board has heard the evidence and reached a decision, do you not agree with me that it would be wrong to have that decision overridden by the executive arm of Government?

A. I think so, yes.

Q. And is it not your view that one of the prime merits of the regulation of utility by a commission or a board is that the commission should be protected from this kind of pressure, and should be free to make decisions in these controversial matters in a semi-judicial atmosphere, and in a completely impartial atmosphere?

A. Yes. May I interrupt you?

Q. Yes.

A. I would not like to be put on record here as passing judgment on a system that you may have in Canada.

Q. I fully appreciate that and I am really not trying to embarrass you. I would not do that for anything. But when we do get an expert on the stand, I hope we can get away from any inhibition, and unequivocally get what opinion he may hold personally on the matter. Now then, we have had also in the hearings before this Commission such additional questions put forward, such matters put forward; and there is a familiar theme we have heard here many times: That the western farmer pays the freight on the thing he buys and also pays the freight on the thing he sells. Do you agree that that is an invariable rule?

MR. FRAWLEY: Who ever said that?

MR. EVANS: I do not know whether it was in the apex or the claimed apex.

MR. FRAWLEY: Somewhere there.

THE WITNESS: That involves so many things that I would question whether this is the place to argue such a principle.

MR. EVANS: Q. I know; there are a great many influences; but could we reduce it to this kind of proposition: That whatever, as a matter of general principle, may apply in such cases, there is not a different principle as regards the farmer than there is as regards any other person in the country? I mean, a different principle of economics does not apply?

A. I do not quite get what you are putting in your question.

Q. I am deficient, I know; but we have had a claim here that the western farmer pays the freight on the thing he buys and on the thing he sells. I was going to refer you to the language in your book and the reference there at page 21, and I thought that you had gone as far

as my question led you, and I want to give you every opportunity of correcting it. I understood your book to say that it is the common claim on the part of farmers; and then, about half-way down in the middle of page 21, you say:

"But this cannot be true unless one law determines the price of manufactured commodities and a different law determines the price of agricultural products."

I wanted to see if that was still your view of such claims, speaking generally, as a matter of principle.

A. Yes, but it takes a good share of that chapter to explain it.

Q. I am not going to say that in all circumstances it is true, but the general law with which you would approach that question would be the same law with which you would approach similar questions involving other products?

A. Yes, of course. There are many differences which make it difficult to say the situation is comparable.

Q. Quite. For example, there might be the wheat policy, the policy we have of fixing the price for wheat, with the negotiations being carried on by the Government with the purchasing government, for instance.

A. There are many factors involved.

COMMISSIONER ANGUS: Q. Were you writing with farmers for export in mind, or were you considering sales mainly within the country?

A. I do not believe I was making any distinction there.

MR. EVANS: Q. I do not want to pursue that into all its ramifications, but I was wondering whether

it was a general matter that the position you took was not right. Now, in Mr. Moffat's evidence at page 8894, Mr. Moffat appeared for the Province of Manitoba, and I think the effect of his evidence is, to put it shortly to you, it was rather suggested that producers of manufactured goods were really quite indifferent to the rates that were charged on those goods, and that they could not be relied upon to protect the interests of the consumer in regard to the level of rates. Have you any views on that?

A. I would say that in some situations he might be indifferent, and to some markets, perhaps; but when he is faced with competition from alternative sources of supply, different manufacturers differently located, he is by no means indifferent to the rates.

Q. I suppose he does have competition in most markets with most things; would you go this far: That you might have that interest whether or not there was competition; for example, if a producer wanted to enlarge his output and wanted to have his price down so that he could reach into buyers that perhaps otherwise would not get to the point of buying his article, that he would be very much interested there in having his freight rates as low as possible?

A. Yes, that might easily happen.

Q. We have had other things here. One of them was this: There were a great many exhibits filed throughout the hearings showing the relationship percentagewise between the value of a commodity and the charge for transportation. And I am going to ask you this: Would you not agree that the fact that the ratio of transportation charges to the value or price of the commodity is high would not incline you

to conclude that the rates were not too high?

A. Yes, I would agree with you. That high ratio might be due to the rates being too high, but in many cases it is due to other causes.

Q. I quite follow that. All I was putting to you was that you could not automatically conclude from that that the rates were too high?

A. No.

Q. Would this not also be true: That you might have a condition under low rates where the relationship between transportation charges as such and the price of the commodity was higher than it would be under higher rates?

A. Yes.

Q. So it really gets down to this: That low rates tend to produce the geographic divisions of labour and sometimes tend to longer hauls, and in that way produce, even through a low level of rates, a higher proportion of the price than would otherwise be the case represented by transportation charges?

A. Yes, we have many illustrations of that.

Q. Yes. Now then, may I ask you a few questions about the rate base for a railway or a utility. Would it be your view that actual cost is the desirable or the conservative method, speaking of the actual cost of use, and useful assets, would be the conservative and more desirable method of arriving at a rate base for a railway company?

A. More desirable than what?

Q. Than the cost of reproduction?

A. Yes.

Q. Or, as an alternative, did you ever hear of the "Vintaging of the dollars" process of arriving at

valuation?

A. I know what you mean.

Q. As compared to the other alternative, would it be your view that the actual cost rate base is the more conservative, and more likely to be the proper one?

A. More likely than what?

Q. More likely to be the proper one?

A. I think so.

Q. Now then, when it comes to arriving at a rate base, and knowing the original cost, is it always, in your view, proper to deduct accrued depreciation to arrive at your net rate base?

A. In most instances, yes.

Q. I suppose the instances you have in mind are those where the depreciation which has been accrued on the books has been recovered through charges to expenses?

A. I did not quite catch you.

Q. I was trying to have all your qualifications, and I assume you said in most cases you would, and that meant that certainly in the case of accrued depreciation which has been recovered through charges to operating expenses?

A. Yes.

Q. And that there might be some doubt about the mere transference of bookkeeping entries which do not represent recoveries through charges to expenses?

A. I do not quite see what you are implying, or what is involved in your question.

Q. I thought your book made a distinction on that?

A. I think I did make a distinction, but I am not sure that it is the distinction you are making.

Q. Perhaps we ought to look at it. I do not want to get you to agree with anything that is not right.

COMMISSIONER ANGUS: I think the time for adjournment has arrived unless you feel that you can finish within a reasonably short time, Mr. Evans?

MR. EVANS: I shall need fifteen to twenty minutes more, in order to finish.

COMMISSIONER ANGUS: In that case, we will adjourn now until tomorrow.

---At 4.45 p.m. the Commission adjourned until tomorrow, Friday, December 9, at 10.30 a.m.

A.R.

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ROYAL COMMISSION
ON
TRANSPORTATION

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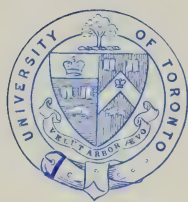
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ROYAL COMMISSION ON TRANSPORTATION

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Please Note: Re Volume 62: At page 12094, there is a notation that page 13000 follows. There is a skip of some nine hundred pages.

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
FRIDAY,
DECEMBER 9, 1949.

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

- - - -

G.R.Hunter,
Secretary.

P.L.Belcourt,
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- - - -

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) portation Association

R. Kerr) Board of Transport Commissioners

J.O.C.Campbell, K.C.) Province of Prince Edward Island

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OTTAWA, ONTARIO,
FRIDAY, DECEMBER 9th, 1949

M O R N I N G S E S S I O N

PROFESSOR D. P. LOCKLIN RECALLED

MR. EVANS: I find on looking at my notes, my lord, that I have nothing further to ask of Dr. Locklin.

CROSS EXAMINATION BY MR. O'DONNELL:

MR. O'DONNELL: I have just a few questions, my lord. It occurs to me that Section 500 of the Transportation Act has not been put on the record, and it might be well just to read it in. I take it as given in Dr. Locklin's book at page 555.

Section 500 of the Transportation Act reads:

"It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation."

Q. That is Section 500 of the Transportation Act?

A. Yes.

Q. Dr. Locklin, from what study you have made of the transportation situation as it exists in Canada and as it exists in the United States, I think you would agree that the situation here is considerably different from that existing in the United States with respect to coordination of various transportation agencies?

A. I understand there is a difference, I have not particularly studied the Canadian situation.

Q. Well, in the United States, by reason of the provisions of Section 500 and other provisions, I understand that the water transportation agencies are controlled as well as the rail transportation agencies by the Interstate Commerce Commission?

A. Since 1940 water carriers have been regulated, but there are so many exemptions from the provisions of the Act that actually only a rather small proportion of water movements are subject to regulation.

Q. Intercoastal movements as between the east coast and the west coast are under the control of the Interstate Commerce Commission, are they not?

A. Well, some of the exemptions apply there.

Q. Well, the Commission can exercise control within limits other than those where the exemptions apply?

A. Yes, but the exemptions apply to traffic which is pretty important. For instance, the petroleum movement, the movement of petroleum in tank vessels is exempt, and the movement of bulk commodities is exempt, I believe it is if carrying more than three such commodities in the vessel, and most of the transportation by contract carriers by water is exempt unless that is shown to be competitive with other modes of transportation.

Q. And as far as the trucks are concerned, interstate trucking is controlled by the Interstate Commerce Commission?

A. Yes.

Q. And in adjusting rates between rail transportation and other modes of transportation, the Commission does have certain control over the various transportation agencies in that respect?

A. Yes, that is right.

Q. And is it your view that a fully co-ordinated transportation system taking in the various agencies such as rail, water, trucks, and even air can be achieved without some body which has a unified control of this transportation so that they may be correlated?

A. No, complete coordination could not be obtained without unified regulation.

Q. Would you consider it proper that one of the principal transportation agencies, the railways in particular, should be very rigidly controlled, and that competing agencies, and particularly trucks and even water transportation, should be free of control so that they may adjust their rates as and when they please in competition with the railways?

A. No, I think I would say no to that.

Q. Could you elaborate on that so that we may have the benefit of your views?

A. Yes, I want to elaborate further on that. I think that whether the various agencies of transportation should be regulated or not depends not only on this problem of coordination but upon other things as well, and I would say that water transportation should not be regulated or motor transportation should not be regulated for the purpose of protecting the railroads, although regulation of motor carriers in the United States and to some extent the regulation of water carriers probably incidentally benefits the railroads.

I think an examination of our legislation and of the policies which have been adopted or followed by the Commission in administering it makes it clear that the regulation of these other modes of transportation is not

being carried on for the purpose of protecting the railroads, and I will be glad to explain why; I think it would be a mistake to use that regulation to protect the railroads.

Q. The purpose of coordinated control, I assume, or the object of it would be that each agency should operate in a sphere in which it is best suited or particularly suited; is that not the proper object?

A. When you have a highly competitive situation between the different modes of transportation I believe it is necessary to exercise some control over those relationships in order to prevent uneconomical diversion of traffic or carrying of traffic by agencies that are not suited to carry it, to some degree.

Q. And in order that that should be achieved as effectively as possible, there should be a unified control by one regulatory body, preferably; wouldn't that be your view?

A. Well, it makes it easier to bring about that regulation, yes. I perhaps should elaborate a little bit. What I had in mind was that in the United States the Interstate Commerce Commission has found it necessary to use its minimum rate power at times to check rate-cutting between the different modes of transportation.

Q. And the Motor Carrier Act of 1935 and the Transportation Act in 1940 had as their purpose, I assume, or one of their purposes, the control of trucks, or rather, the unified control of these various agencies under the Interstate Commerce Commission?

A. It is true that the control was placed under the Interstate Commerce Commission, but the regulation was more for the purpose of controlling a situation which had

developed in the motor carrier industry rather than to bring about a coordination between the railroad and motor transportation.

Q. Well, insofar as there is a unified control, the various transportation agencies could operate in their respective economic spheres more readily than if there were no unified control?

A. Yes.

THE CHAIRMAN: Q. Is the object of the control really to keep them all going?

A. No, I would not say that the object was to keep them all going. I would say that the object of regulation was to prevent undesirable practices by the various modes of transportation. It is true that there is an obligation on the part of the Commission to try to maintain an adequate transportation system, which implies that an adequate transportation system must be supported in some way.

MR. O'DONNELL: Your view, I take it, is pretty well in conformity with what is set out in the Interstate Commerce Commission under the heading of National Transportation Policy. The Policy in the United States, the National policy is set out in that section of the Interstate Commerce Commission, the opening section.

THE CHAIRMAN: Do you mean Section 500?

MR. O'DONNELL: No, Section 1. It might be well to put that on the record, for convenience sake. That is a section, is it not, Dr. Locklin -

A. Well, that declares the broad general policy.

Q. It reads as follows:

NATIONAL TRANSPORTATION POLICY

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;-all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Q. And I read section 500 of the Transportation Act previously. In connection with the regulation of motor trucks, Dr. Locklin, the Interstate Commerce Commission in so far as it has control over motor transportation, has set up regulations and prescribes a uniform system of accounting for Class 1 common and contract carriers, and has them report at regular intervals?

A. Yes.

Q. I take it you agree that that is a wise provision to have a uniform system of accounting and reports from these carriers at regular intervals?

A. That is desirable in respect of the large carriers but, of course, there is a very great difficulty in getting thousands of very small carriers to keep accounts, and it is hardly worth while to keep them on a uniform basis.

Q. Those having operating revenues of \$100,000 a year or more are the Class 1 common carriers who report under the unified system of accounting?

A. Yes.

Q. Thank you very much, Doctor.

COMMISSIONER INNIS: Really following Mr. Evans' remarks are there many cases in which appeals are made from the Interstate Commerce Commission to the Supreme Court?

A. In the course of a year there would be a good many cases. I cannot say how many appeal to the special three-judge courts to which such cases go first, and then in the Supreme Court I would roughly guess that each year there may be anywhere from eight to fifteen cases involving orders of the Commission.

Q. Are those sustained in the main or is the power of the Interstate Commerce Commission cut down?

A. The Commission is sustained in a majority of those instances. That was not the case formerly, but in recent

years I think that is so.

Q. So that the position of the Interstate Commerce Commission has been strengthened, has it not, as a result of the attitude of the Supreme Court?

A. Yes.

THE CHAIRMAN: Does the appeal lie on questions of law only?

A. That is my understanding. I am not a lawyer but I am pretty sure that is correct, that that appeal lies on questions of law only.

MR. EVANS: There is no other appeal from the Interstate Commerce Commission is there?

A. I do not know what you mean by "any other appeal".

Q. Any other appeal than the one to the Supreme Court?

A. You mean beyond the Supreme Court?

Q. But there is no alternative appeal; the only appeal that is available is to the Supreme Court?

A. Well, they appeal first in most cases to a special three-judge court.

THE CHAIRMAN: Well, is that on questions of law only?

A. That is on questions of law only. From the decision of a special three-judge court the cases are carried to the Supreme Court if anybody so desires.

MR. EVANS: But no appeal - I want to get this straight - there is no other appeal than an appeal to the Courts in the United States from the Interstate Commerce Commission?

A. That is right, no other appeal.

COMMISSIONER INNIS: My point, Mr. Evans, was as to whether the inability of the point which you made yesterday in appealing to the executive would mean that much greater emphasis was placed on the relations to the Supreme Court?

THE WITNESS: I could explain that three-judge court situation a little more fully -- it is rather peculiar. In

1910 Congress set up a special court known as the Commerce Court to hear cases which were appealed from the Interstate Commerce Commission.

THE CHAIRMAN: Was that court composed of judges?

A. That court was composed of judges. I forget at the moment just how many there were. That court had a rather unfortunate history and was soon abolished. One of the difficulties was that it attempted to apparently re-try the cases that had been decided by the Commission and not confine itself to questions of law, and although reversed by the Supreme Court many times it kept on that practice. Congress, therefore, abolished that court and when they did so they provided that the cases that formerly went to the Commerce Court should go to a special three-judge court which is set up for each case consisting of, I think it is, two district court judges and at least one circuit court judge, and that special court will hear that case and dissolve as a special court after that.

Q. Then there is an appeal from that decision to the Supreme Court?

A. Yes.

MR. O'DONNELL: Just one other question, my lord, I thought might be of interest. You have in connection with the administration or control of the trucking agencies, what are known as joint boards? Would you just explain how those boards operate, Doctor?

A. I can in a general way.

Q. It may be that you have summarized it probably at page 712 here, and it might shorten it if I just read it: "Joint Boards" - those are for the purpose dealing with trucking questions and of assisting the Interstate Commerce Commission in their control of interstate trucks. That is, generally speaking, the object of these boards, is it not?

A. Well, it is to relieve the Interstate Commerce Commission of the duty of handling all of the cases. There are so many thousands of them.

Q. In your book at 712, you say this:

"A novel feature of Part 2 of the Act is this provision for obtaining the aid of State officials. The Act provides that if an application or complaint filed with the Commission involves not more than three states, it shall be referred to a joint board consisting of a representative of the State Commission of each state affected. The joint board may be used at the discretion of the Commission in proceedings which involve more than three states. The members of joint boards are appointed by the Commission from nominees made by the state regulatory body or the Governor. The decision of a joint board becomes final if exceptions to its report are not made within twenty days after the service of the report upon the interested parties, or if the Commission does not review the case. If exceptions are filed to the report of the joint board, the Commission must consider the same and either upon the same record or upon the record as supplemented by further hearings, make such order as may be appropriate."

It occurred to me, my lord, that there might be something in that type of set-up that would be possible here in Canada. You remember Mr. Gaffney made mention of a joint control body which would consist of representatives of the various provinces acting in connection with the Board of Transport Commissioners or some other unified body.

CROSS-EXAMINATION BY MR. SHEPARD

Q. The questions which I have to ask Dr. Locklin are few in number and they arise out of some questions that my friend, Mr. Evans, put to the witness yesterday afternoon. I would like to ask you first, Dr. Locklin, whether you have read the evidence put in before this Commission by the Province of Manitoba?

A. No, I have not.

Q. So that you are not familiar with the evidence of Mr. Moffatt that was referred to yesterday?

A. No, I am not.

Q. Now, in your discussion with Mr. Evans, reference was made to who pays freight, and I just wanted to discuss that with you for a moment. Now, you probably know, or if you do not know I think I can tell you, that the price of grain in Western Canada is on a base of what we call "The base of Fort William", so that a farmer living in the vicinity of Winnipeg, some four hundred or five hundred miles west of Fort William, would receive the Fort William price less the transportation charges on that grain. A farmer living in the vicinity of, say, Saskatoon, which is north and west of Manitoba, again another five hundred or six hundred miles I think, would receive the Fort William price less higher transportation charges. I just wanted to ask you whether you would agree that the impact of the transportation charges is felt by a primary producer of grain under those conditions?

A. Yes. Perhaps that, however, needs further explanation in order not to be misunderstood. That is a common relationship between the prices of commodity and freight rates on commodities in surplus producing areas?

Q. Yes, exactly, export commodities.

A. On export commodities. It is also true of many other

commodities. To use an illustration that came to my attention just a few days ago, I was reading a recent decision of the Interstate Commerce Commission involving the rates on wool, and it seems that the wool prices in the United States are Boston prices. There is the wool market, in other words, and the price of wool which the farmer receives tends to be the Boston price less freight and other costs involved in handling the wool, so that the Ohio farmer producing wool presumably gets more for his wool than the Rocky Mountain rancher who produces wool. Another point needs to be made further here, and that is, that when that relationship is described you start with a market price somewhere and, of course, in the determination of that market price, transportation costs like other production costs have had an influence, and in the particular illustration which I gave, we could suppose that if the rates on wool, if all the rates on wool to Boston, applicable also on imported wool, were increased, it would affect the price of wool in Boston, so transportation costs enter into the market price of the wool or of other commodities under such conditions.

Now then, if that price is established, why then the relationship which you describe in connection with wheat generally applies on the product that is produced in various areas that produce a surplus of the product and ship it to that market.

Q. I was not suggesting that the full burden of the transportation costs necessarily fall on the primary producer but taking into account what you have told us, the primary producer of grain in the West is undoubtedly affected by the length of haul and the attendant transportation costs in getting his price for his primary product?

A. Yes, I don't think I want to dispute that.

Q. Now, just one further point, Dr. Locklin, that I had in mind: A farmer in the west buys binder twine, let us say, as an example, which is manufactured in eastern Canada, and he pays a price near his farm, and presumably the cost of transportation is included in that price. I presume you would agree with that?

A. Yesterday I shied away from these questions; now I am attempting to answer them. Perhaps I should apologize to Mr. Evans for not at that time answering his questions more fully. But, to answer your question directly, presumably western Canada in this case is what we would call a deficit area; that is, the product has to be brought in from outside, in which case it is normal to have the price in that area include transportation charges; that is, the price would naturally include the price at the point where the product is manufactured plus the freight. But, again, I think that needs to be pursued a bit further in order not to lead to too broad generalizations, that if let us say this product or any product, manufactured product, for consumption in western Canada, is produced say at A, 500 miles from Edmonton or Calgary or some other point---

MR FRAWLEY: Just stick to the Alberta points; that will illustrate it much better.

THE WITNESS: And that is the normal source of supply for that product; then you would expect the price in Alberta to be this factory price we will say in A plus freight; but if another manufacturer in B, which is 900 miles from Alberta, wants to sell in that market, he cannot add all of his freight; he will have to absorb part of the freight.

MR SHEPARD: Q. He will reduce his profit, in other words?

A. That will reduce his profit. If he does not feel that he can afford to sell in that market under those conditions, why, he cannot sell, that is all.

Q. Then from the first illustration that you gave us, Dr. Locklin, it would follow, I would think, quite obviously, that normally the manufacturer, the distributor and the retailer, one of them would pay the freight charges himself, but would invariably pass it on if he could?

A. Oh, the ultimate consumer in such a situation pays that freight; that is, it is included in the price he pays.

MR O'DONNELL: It is part of the cost of production, getting the commodity into the hands of the consumer.

THE WITNESS: Yes.

CROSS-EXAMINED BY MR RAPOPORT:

Q. Dr. Locklin, you told us that the Interstate Commerce Commission regulates interstate traffic; can you tell us whether that same Commission has any control over intrastate traffic, purely intrastate?

A. No, it does not.

Q. Has the Commission any power to prevent the abandonment of operations by motor carriers that choose to do so?

A. I would have to look that point up; it is probably in this book.

Q. I may be able to help you; it is in your book at page 713, paragraph 5:

"The Commission has no power to prevent the abandonment of operations by a motor carrier if the carrier desires to discontinue operations entirely."

A. That must be right, then.

Q. However, I cannot find any reference in the text, in the few minutes I have had to look at it, to any expression of opinion of the Interstate Commerce Commission as to whether a shipper in the normal circumstance is entitled to a choice of transportation on the highway as well as by railway; can you help me on that, Dr. Locklin?

A. I do not believe I quite understand your question.

Q. Am I correct in saying that as a general rule the Commission has said that a shipper is entitled to a choice of transportation media?

A. He has every choice possible.

Q. Let me go a little further: If at a hearing before an examiner the only opposition to a motor carrier application comes from the railroad -- do you follow me so far?

A. Yes.

Q. Is it likely, in your knowledge of the situation, that such a motor carrier application would be denied?

A. It is not likely that it would be denied.

MR O'DONNELL: It could be.

THE WITNESS: It could be denied. But the point would turn on whether -- well, I had better put it that it would not turn on the point that the railroad might object.

MR RAPOPORT: Q. Perhaps I could try it this way, Dr. Locklin: Would you say I was wrong if I said that the Commission as a general rule expresses the opinion that a shipper is entitled to alternative modes of transportation? Would you disagree with that as a general rule of the Commission?

A. Well, if I understand you, I would say yes.

Q. Do you agree or disagree?

A. I think I would agree with your statement, if I

fully understand it.

Q. In the United States, Dr. Locklin, have you a comparative situation with ours, whereby the Government of the United States is an owner of a railway system?

A. It owns the Alaska Railroad and the Panama Railroad, I believe.

Q. Other than those two, within the rest of the territory of the United States is there any other ownership by the Government?

A. No.

Q. You have also indicated to my friend Mr. O'Donnell that there was prescribed accounting procedure for class 1 carriers. Dr. Locklin, what is the definition of a class 1 carrier in the United States?

A. I believe it is a carrier with operating revenues in excess of \$100,000 a year.

Q. Are you aware of any prescribed accounting procedure for motor carriers with less revenue than \$100,000 a year?

A. No, I am not, though I think there has been some recent discussion as to whether some simplified form, accounting form, should not be required, but I do not know what the ultimate decision with respect to that has been. I would not say there has not been any.

Q. There has not been in the years since 1935, since the Motor Carrier Act has been---

A. I would not say for sure.

Q. Another thing: Can you help me, Dr. Locklin, on the question of whether railways are freely permitted to acquire competing highway motor carrier services under your Motor Carrier Act?

A. No, they are not.

Q. Are you familiar, Dr. Locklin, with our term in

Canada "agreed charges"?

A. Yes, I know something about it.

Q. Have you any similar provision in the United States?

A. No.

Q. My friend Mr. O'Donnell in his cross-examination referred to the words, as I have them, "sphere of operation of the motor carriers"; does the administration of the Motor Carrier Act involve the application of any so-called spheres of operation for common carriers by motor vehicle?

A. No, not so far as I know.

Q. One last question, Dr. Locklin: During Mr. O'Donnell's cross-examination you hinted that in your opinion it would be a mistake to regulate trucks for the sole purpose of assisting the railways; I do not think you had a chance to enlarge on that opinion; would you do so now, please?

A. Well, I think I said -- whether it was at that time or not I do not remember -- that the regulation of motor carriers or of water carriers will have some incidental beneficial effects on the railroads, but that it is not to my understanding the purpose of regulation of either water carriers or motor carriers to protect the railroads from a new or newer form or different form of transportation. Now, so far as motor transport is concerned, it is my personal view that the type of service provided by motor trucks is a type of service that is very beneficial to the public; they want it; they are entitled to it. There might possibly be some situations under which it would be necessary to restrict that, in order to protect some other mode of transportation, but I think the situations would be very, very rare.

Q. My last question, Dr. Locklin: I wonder if you can help me: In 1935, when your Motor Carrier Act was adopted, I believe in your book you say that there was a tendency for the older and better established concerns in the industry to support the legislation?

A. That is right.

Q. Thank you.

CROSS-EXAMINED BY MR O'DONNELL:

Q. Just one question arising out of what Mr. Rapoport asked you, doctor. In cases where licenses would be granted to motor carriers, the routes would be prescribed, would they not, in interstate commerce, interstate trucking?

A. Yes.

Q. And the rates of the truckers would have to be filed, and the rates would have to be abided by by the trucker?

A. Yes.

Q. Truckers would not be free to take any rate for hauling commodities over the routes for which they had been licensed by the Interstate Commerce Commission?

A. No. They have to observe published tariffs, the common carriers do.

Q. Just one question as to what my friend Mr. Shepard was discussing with you. You have in your book a chapter on freight rates, and I think you summarize it this way, that the term "cost of production" is broad enough to cover all cost necessary to put a commodity into the hands of the consumer?

A. Yes.

Q. And that that includes the freight charges?

A. Yes.

Q. And then you summarize the thing this way:

"If we recognize transportation costs as a part of the cost of production, the conclusion seems incontrovertible that in the long run transportation costs, like other costs of production, must be included in the price of ^{the} good. The short-time result may be quite different, but in the long run prices must be high enough to cover costs of production, including transportation charges, or goods will not be produced."

A. That is correct; but of course it must be---

Q. You still agree with that?

A. It must be interpreted in the light of these other market situations that I have described, about surplus producing areas and the fact that after a market price is determined the producer shipping to that market tends to get that price less freight.

MR EVANS: My lord, I do not want to have a second cross-examination, but I draw to the attention of your lordship and the members of the Commission that the normal procedure here has been for the provinces, who are in common interest with each other, to precede the railways. Now, I have a question I would like to put to Dr. Locklin, in view of my friend Mr. Shepard's cross-examination, and I hope you will not think I am just unduly delaying this, but it does arise strictly out of Mr. Shepard's---

THE CHAIRMAN: If it is going to be of any use to us, put it.

MR EVANS: I think it will be.

CROSS-EXAMINED BY MR EVANS:

Q. Dr. Locklin, when you were discussing with Mr. Shepard the question of who pays the freight on wheat,

could we generalize this way, that where the demand for a commodity is inelastic there is a greater tendency to reflect the rate in the ultimate price of the good and therefore to pass it on to the consumer?

A. If you are talking about changes in freight rates and their effect on prices, yes.

Q. When we are talking about changes in freight rates I think you will agree that a general change in freight rates is more likely to produce that result than a change in the specific rate?

A. Yes.

Q. So that we now have it that where the demand is inelastic for a commodity there is a greater tendency to pass the freight rate on to the consumer than where the demand is elastic?

A. I think what you are saying refers to the effect of changes in rates, not as to the question of whether there is an element of freight rate in the price, which would apply I think in the case of elastic or inelastic demand.

Q. Then would you agree with me that wheat is in the category of a commodity with regard to which the demand is inelastic?

A. Well, of course, that is a relative term.

THE CHAIRMAN: I would like first if somebody would tell me exactly what you mean by inelastic.

MR EVANS: I am sure Dr. Locklin can put it much better than I could.

THE CHAIRMAN: Well, since you use the term, I thought perhaps you might explain it.

MR EVANS: It is a term that appears in Dr. Locklin's book.

Q. Dr. Locklin, would you tell us what is meant by

the use of the words "elastic" and "inelastic" in reference to demand -- and supply, for that matter ?

A. Well, to state it without getting too involved, we mean by an elastic demand -- well, let us take inelastic demand first -- that if the demand is inelastic, a change---

THE CHAIRMAN: Q. Do you mean constant by that? Does it mean constant?

A. No. If the demand is inelastic, that means that if the price is increased, from whatever cause, less of the product will be consumed.

Q. Less?

A. Less.

Q. That is inelastic?

A. Inelastic. Of course, it is a relative term. If the demand is elastic, that means that if the price is increased, much less of the product would be consumed. Is that right, or did I get mixed up?

Q. Do you say that if the price is increased, much less would be consumed? Is that what you say?

A. I have forgotten what I said. I think your colleagues could explain it fully as well as I can.

MR FRAWLEY: Call the class to order.

MR EVANS: Q. Perhaps I could put it to you. What you mean by the effect of an inelastic demand is that the consumption does not tend to drop when the price increases to the same degree as it would do where the demand was more flexible or elastic?

A. Yes.

Q. I assume, then, that it can be said generally that where that is the case the price is more likely to reflect these increases in transportation charges?

A. Yes.

Q. And I was suggesting to you that wheat is one of those commodities that it could be said were inelastic, in regard to the demand; for example, the consumption of wheat will grow when a country is poor, and the consumption of alternatives may grow when the people of a country are more prosperous?

A. Well, yes.

THE CHAIRMAN: Pardon me; I thought you were starting off to show us some relation between prices.

MR EVANS: I was giving an example of what I meant, that was all.

Q. Would you straighten me out on that, Dr. Locklin?

A. Well, I just have a feeling that we only confuse the issue by talking about elastic and inelastic demand, if we are going to talk about wheat prices and the effect of freight rates on the prices of wheat.

(Page 13141 follows)

Q. You think that confuses the issue? I was looking at a part of your book, and you were dealing at page 22 with the effect of freight rates on prices. I do not want to take the time to read it all, but the statement is made there that:

"The less elastic the demand for a commodity, i.e., the less its consumption is affected by price changes, the greater will be the tendency for an increase in freight rates to raise the price of the good."

That means, to pass it on to the consumer?

A. Yes.

Q. "Conversely, the more elastic the demand," that is where the demand is affected by an increase in price, "the less will the price be raised. For the purposes of this analysis we are interested in relative elasticity or inelasticity of demand for two different commodities, and not whether elasticity is greater or less than unity."

Now then, in order to get the picture complete, the converse is the case where the supply is inelastic, or elastic, so that while if you have an inelastic demand the tendency is to pass the increase in the rates to the consumer, and you find the converse true inasmuch as where the supply is elastic, that happens, but where the supply is inelastic the reverse happens, as I understand your book?

A. I think that is stated correctly, yes.

THE CHAIRMAN: Which one of these applies to short supply?

MR. EVANS: I wish Dr. Locklin would answer that question, because he is better qualified than I am.

THE CHAIRMAN: Q. Sometimes the supply is low; is that what you would call elastic or inelastic?

A. Well, the term "elastic supply" would mean that when the price falls, less of the product is produced because the price is falling.

Q. Suppose the fall in the price of the product takes place for other reasons; did we not have the situation in Canada, at least in the thirties, where there was too little wheat on account of very bad climatic conditions, and still the price was very low?

A. Well, that is not a question of elasticity of supply.

Q. Well, what would you call it; have you any name for it?

A. No, I would not want to -

Q. That is, you have both a short supply and a very low price?

A. Well, I do not know enough about that situation to explain about that point.

COMMISSIONER ANGUS: Q. Are we not talking a little at cross purposes, because the supply that may or may not be elastic is the world supply, and isn't the situation that if a higher price for wheat will lead to a bigger acreage in the Argentine or Australia, or something of that kind, that then the supply is elastic?

A. Yes.

Q. And it is that situation that determines what in the long run the Canadian wheat farmer is likely to pay for transportation costs?

A. I think so.

COMMISSIONER INNIS: Q. I suppose it should be kept in mind that there are two types of wheat farmer; there is, on the one hand, the wheat farmer who is compelled to produce the wheat?

A. Yes, if you can only produce wheat on your land,

then the supply is pretty inelastic.

MR. EVANS: Q. If that were the world condition, I suppose you mean?

A. Yes, for that particular individual.

Q. Then, one question arising out of Mr. Rapoport's cross examination. He put to you a suggestion to this effect, that the Interstate Commerce Commission does not permit a railway company to own and operate a trucking service on the highway?

A. No, he did not put the question in that way.

Q. Well, I understood that to be the question?

A. I think he asked if the railroad was permitted to acquire control of a competing highway transportation agency.

Q. I just want to get clear that in the United States a railway is entitled to operate these so-called auxiliary services or key-point operations?

A. Yes, the railroads are permitted to either engage in certain types of motor carrier operations themselves or acquire control of existing motor carriers under certain conditions, when the service is more or less of a type that is auxiliary to the rail service.

Q. And by this key-point system, a line of railway having four or five key-points will set out cars at the key-points and operate a motor service from that key-point to the ultimate destination of the traffic?

A. Yes.

Q. And that, I think you would agree with me, is the true coordination of highway and rail operations?

A. It is certainly one form of it, yes.

Q. All right, thank you.

CROSS EXAMINATION BY MR. O'DONNELL:

Q. The railways may also be allowed to acquire trucking facilities or set them up for the purpose of expanding their business into areas that are not served by the railways?

A. Well, that would have to be qualified. I think in some cases that is so. However, whether it is a wise policy or not, I do not know. I think that if that proposed service came into competition with an existing motor carrier, that it would not get the right -

Q. No, that would be a question of determining which carrier would get the license, but on the assumption that there was no motor carrier in the area, the railways would be allowed to put in its trucking service for the purpose of expanding its service in that area?

A. Yes, I think that is so.

EXAMINATION BY MR. COVERT:

Q. There are a few things I would like to have added to it, if I could, and that is: could you give us what the restrictions are on the purchase of trucks by railways?

A. What is that question?

Q. Could you give us just what the restrictions are on the purchase by railways of competitive instruments like for instance, the control of trucking companies, and the purchase and operation of such; could you give us that?

A. Well, I think the answer is implied in what I said before, that under the present policy of the Commission the railroad would not be permitted to acquire control of a motor carrier that was providing a service in competition with the railroad.

Q. Yes, that was my understanding; they will not, if it is competition to the railroad?

A. That is right.

THE CHAIRMAN: Q. Does that mean that if a railway desires to acquire a motor truck line, that it must apply to the Commission to do so?

A. Yes.

MR. COVERT: Q. I believe any railway that already owned trucking companies, that they had what is known as a grandfather clause, so that they could continue to operate?

A. Yes.

Q. Even although they were operating in competition with the railway itself?

A. Yes, I think that is so.

Q. On the question of regulation of trucking, is there any regulation at all by the Interstate Commerce Commission of non-for-hire trucking, that is, the private commercial vehicle?

A. Only safety regulations.

Q. Do you know about the States themselves; that is, I understand there is interstate regulation of trucking in certainly most of the states, is there not?

A. Yes.

Q. And do the States themselves generally regulate non-for-hire trucking?

A. I know of no instances where the States regulate the non-for-hire trucking.

Q. I wondered if you could give the Commission the benefit of your views on the feasibility of regulating non-for-hire trucking? Would there be some limitation to it? Would it be a difficult thing to do?

A. I suppose by regulation of non-for-hire trucking

all that is meant is that there would be regulations imposed on the extent to which an individual can transport his own goods on the highway.

THE CHAIRMAN: Q. Do you mean, on a mileage basis?

A. It might be on a mileage basis, because you would have to license the trucker, I suppose to say that he could only operate within certain limits.

MR. COVERT: Q. Now, do you think, Doctor, that the limitation of trucking to a defined area or an economic sphere so-called is a feasible thing to do?

A. I do not believe anybody can define such a field. You cannot do it, I believe, on a mileage basis. There are some commodities that obviously cannot be transported very far by truck, say, coal. There are other commodities that can be transported a long distance, household goods, for instance, are transported across the continent, by trucks.

Q. I suppose the condition of the roads and the changing capacities of the trucks and all those things have a great deal to do with it? and it would be a continually changing thing?

A. Yes, the only thing at the present time that limits trucking is the cost to the individual, of doing it. I think that is the way it should be.

Q. Then I wanted to ask you also - do you know whether any American railways complain of Canadian railway competition by virtue of the inability of the American railways to get relief from Section 4 in the United States, whereas it is alleged in Canada that there is this long and short-haul discrimination, and I wondered if you had any knowledge of complaints from American railways?

A. I do not believe I quite visualize the situation you have in mind.

Q. Well, my understanding is, for example, the rate in the United States, the transcontinental rate in the United States is today considerably higher than it is in Canada, and due to the inability of the railways in the United States under existing conditions to put in a lower rate to the coast, I want to ask you if you have any knowledge as to whether there were complaints from the American railways?

A. I have not heard of any,

COMMISSIONER INNIS: Q. In various arguments which were put forward by the railways from the United States concerning this whole problem, there have been complaints to the effect that the Canadian railways were government-owned and consequently were unfair competitors in the transcontinental traffic?

A. There possibly was in some of those big transcontinental cases, but I don't remember for sure, though.

MR. COVERT: Q. Now, Doctor, you have seen the legislation proposed by Alberta with respect to the long and short-haul new Section?

A. Yes.

Q. Now, I just want to ask you a few questions about that.

MR. FRAWLEY: My lord, I wonder if at this point it would not be well if I offered a new draft because your lordship will recall that it was brought to our attention that we had not made any provision for existing departures from the long and short-haul clause, so I have this morning a revision of that. I think it might be convenient if it were put into the transcript at this point in full, just as I offer it.

MR. COVERT: Is there any change in that except the addition of the last sub-section?

MR. FRAWLEY: I want to discuss with the Commission each of the changes.

In the main section of the clause we have substituted the word "company" for "carrier". That was simply because the Canadian Legislation always used the word "company" whereas in the United States it seems common to use the word "carrier".

We have made a similar change in sub-paragraph one, we have substituted the word "company" for the word "carrier".

Paragraph 5 has been somewhat re-written, and it now reads as you will see - perhaps if I read it as it was before. Before, it read:

"The carrier must show a reasonable expectation of improved net earnings as a result of charging the competitive rate".

We think it is clearer now, the way we have re-drafted it:

"There is a reasonable expectation that, as a result of charging the competitive rate, net earnings will be greater than they would be in the absence of such rate."

Then we have added a new sub-section, in an attempt to take care of protecting the existing departures, and that is the extent of the changes we have made.

REVISED DECEMBER 9TH, 1949.

LONG AND SHORT HAUL

NEW SECTION 314A TO REPLACE 314(5)

- (1) The Board shall not approve or allow any toll, which for the like description of goods, or for

passengers carried in the same direction over the same line or route, is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the Company has first established to the satisfaction of the Board that:

1. There is active and compelling competition at the competitive point which is beyond the control of the applicant company and such competition is absent at the intermediate point.
2. The rate which is proposed for the competitive point more than covers the additional expense incurred by the traffic to which it applies.
3. The rate to the intermediate point is just and reasonable.
4. The rate to the competitive point is not lower than necessary to meet competition.
5. There is a reasonable expectation that, as a result of charging the competitive rate, net earnings will be greater than they would be in the absence of such rate.

- (2) With respect to tolls of the kind referred to in subsection (1) existing at the date of the coming into force of this section, the Company shall, within 90 days of such date make application to the Board for approval of such tolls as required by the provisions of subsection (1) and until the determination of such application such tolls shall be deemed to have been approved."

THE CHAIRMAN: Would you give the railways ninety days in which to justify existing -

MR. FRAWLEY: Not to justify it, simply to make application.

THE CHAIRMAN: "The Company shall, within 90 days of such date make application to the Board for approval of such tolls as required by the provisions of subsection (1) and until the determination of such application such tolls shall be deemed to have been approved".

MR. FRAWLEY: Yes, the mere filing of the application would preserve it until the final determination.

THE CHAIRMAN: "Shall be deemed to have been approved" you mean, shall be deemed to have remained effective?

MR. FRAWLEY: Yes, in effect, and as they are, and violating the rule until there has been a final determination of each of the cases. I submit that is complete protection with respect to existing departures.

MR. EVANS: My lord and members of the Commission: May I just suggest this; Mr. Frawley's procedure really I think points out the futility of attempting during the course of hearings of this kind to draft legislation. We have now had almost daily drafts and re-drafts, and in my submission it is most unfair when Mr. Frawley after the witnesses have been cross-examined and some of the weaknesses are shown, to come along and offer another draft.

My submission would be that it is not the function of the parties to suggest to this Commission the exact form of legislation because, after all, if there is to be such legislation, it has to be drafted by those who are familiar with the whole problem of drafting legislation, and who can tie in drafts of that kind with other statutes,

and I think the problem of drafting legislation in advance of proof of need for it, plus the problem of having a Commission of this kind pass upon a draft of this kind is something that the Commission ought to consider carefully before they undertake it. I make that submission in the hope that it will be intended to be constructive and not destructive.

THE CHAIRMAN: I think, Mr. Evans, that you are mistaken as to the function of accepting this draft. It was we who asked for it, and we think there is no better way of getting things down to a concrete form than to have these different people put into a suggested amendment to the Act, just what they want. Now, it is our concern, and the fact that Mr. Frawley submits his desires in the shape of an amendment, does not mean that we have to approve of them, but the fact that we have this amendment here before us gives us in about one third of a page what Mr. Frawley wants, but that does not mean to say that if we adopt his ideas that we are going to adopt his language.

(Page 13153 follows)

MR. EVANS: I am not suggesting that.

THE CHAIRMAN: I consider it is most helpful to us to have this draft. Now, the question of what it contains and whether it should prevail I think is a matter of argument and you will have ample opportunity to be heard on this.

MR. EVANS: Yes sir.

THE CHAIRMAN: But if you think the procedure we are following is a wrong one, you are quite entitled to say so but we intend to carry it on.

MR. EVANS: I have made my point on that very badly; it is my fault.

THE CHAIRMAN: You are talking then about Mr. Frawley, as a result of the examination of the witness, recasting his draft. There cannot be any harm in that because as a result of the examination of his witness he may wish to recast certain questions. Why should not he at the same time recast if he puts it in writing? What harm can he do?

MR. EVANS: May I put it this way? Let us suppose that having heard the cross-examination and some of the witness' remarks in his former draft, he puts in a further draft. Now then, there are two alternatives. The alternative is to study that draft and adduce evidence to show as a practical matter how that draft would affect the other matters as well as the matter under discussion. Now then, the second alternative would be to ask Mr. Frawley to call back his witnesses if we are to have a chance.

THE CHAIRMAN: Well, suppose he does. If the draft is helpful, well then the extent to which it ought to be further acted upon is one for us to consider, whether it is worth while or not. Mr. Frawley has now given us this new draft. As a result of that his old draft disappears. If there is anything in this new draft you think we should be

further enlightened upon, let us know.

MR. EVANS: I was merely going to carry it a step further and if we put evidence in to point out some of the difficulties in that draft, then Mr. Frawley will offer another and he will keep on offering them until the last day of the hearing.

THE CHAIRMAN: I think we can remain masters of the situation.

MR. EVANS: I just wanted to indicate that point.

THE CHAIRMAN: I have no doubt you intend to be helpful, but I think that it is ourselves who suggested this draft and I have no reason at all in mind why we should go back on that. I think on the contrary it helps to expedite our inquiry.

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EXAMINATION BY MR. COVERT

Q. Doctor, I just wanted to find out - In the United States my understanding is that if a railway wants fourth-section relief they must be prepared to satisfy the Commission generally as to the points that Mr. Frawley has in this draft legislation?

A. Yes.

Q. And I wanted to find out first if you felt that this put the railways in pretty nearly an impossible position, and is it difficult, for example, to prove the active and compelling nature of the competition?

A. My interpretation of it would be that it would not be any more difficult under this proposed legislation for the railroads to obtain relief than it is in the United States. In fact, in one or two respects it may be slightly easier.

Q. Would you just tell me what would be easier? You say in one or two respects.

A. Well, the first one that I happen to have in mind is that the Interstate Commerce Commission which now requires substantially these things to be shown, can at any time deny relief even if they are shown. It could impose additional requirements or it could relax requirements, but it is the situation in the United States that although, as I say, as a matter of policy the Commission grants fourth-section relief when substantially these things are shown, it certainly has the power to deny relief even if they are shown. The other thing is that I believe that this fifth point is a little bit easier on the railroads than a similar point which the Interstate Commerce Commission observes and I could show that by directing your attention to certain dissenting opinions in the decisions of the Interstate Commerce Commission in which one or two of the Commissioners thought that the Commission was in fact requiring absolute proof of increased earnings as a result of the competitive rate rather than a reasonable expectation of improved earnings.

Q. Now, I want to get clear on that first one about this "Active and compelling competition". Is that the phrase that is used in the United States -- "Active and compelling"?

A. No, it is not; the word is "Actual" in our Act, and of course, that particular point is in our Act, not just the result of administrative policy.

Q. You mean that "Actual" in the United States has by decision come to mean active and compelling?

A. No, it just seems to be that Mr. Frawley or others thought this was a little better than our language.

Q. That is what I want to find out.

A. I am not sure that it is better.

MR. FRAWLEY: I will take "Actual".

MR. COVERT: That is what I wanted to find out.

MR. FRAWLEY: I don't what to say about that.

THE WITNESS: Perhaps I should read the exact phraseology from Section 4 where that phrase is found.

MR. FRAWLEY: I just draft them better than they do in the United States, I suppose.

MR. COVERT: I understand, Mr. Frawley.

THE WITNESS: This is, of course, in the form of a restriction on the Commission here. It says:

"and no such authorization shall be d granted on account of merely potential water competition not actually in existence".

that is the phraseology.

Q. Now, I just wanted to find out if there had been any decision that had resulted in the word "active and compelling" being the definition or whether this active and compelling seemed to be perhaps a little more than was required in the United States?

A. Well, I did not know that it was but it perhaps could be so construed. I think, however, the Commission has used the term "active and compelling" in some of its decisions. It seems to me that one of the very early ones that I referred to the other day used that phraseology. I won't try to find it but I am sure you can find the phrase somewhere.

COMMISSIONER INNIS: You mean you do not think it is Mr. Frawley's?

A. Well, I think the Interstate Commerce Commission has used similar language.

MR. FRAWLEY: Without consulting me.

MR. COVERT: What I would really like to find out, Doctor, are your views as to just what the competition should be, and should it be any more than actual competition or would

you suggest that it must be active? Active may have the meaning, it seems to me, that it was continuing?

A. I am at a loss to find language which would be entirely satisfactory. As I pointed out before, the Interstate Commerce Commission is fairly lenient in interpreting the phrase "actual competition" and I have also said that the literal exclusion of potential competition which is in our Act seems to me going too far except as it has been modified, as I say, by a rather liberal construction by the Interstate Commerce Commission.

Q. That may be. I just wanted to find out if you thought there may be a danger in using the words "active and compelling" because it might limit entirely or take out entirely merely potential competition?

A. Well, I am certainly not wedded to any particular language in respect of it.

Q. Now, in the second one where it says "The rate which is proposed for the competitive point more than covers the additional expense incurred by the traffic to which it applies" - I just wanted to know if there was any difficulty in the railway proving that to the satisfaction of the Interstate Commerce Commission? Does it present a difficulty?

A. Well, it is used every day and, of course, the Commission has evolved certain rules of thumb, you might say, for judging whether a rate is compensatory in that sense, that it more than covers the out-of-pocket expenses, and in that connection I would call your attention to an appendix to the brief which attempts to show the standards that the Commission have used or these rules of thumb that it has used, in trying to pass upon this question as to whether the reduced through rate would be compensatory or not.

MR. FRAWLEY: The Commission will find that appendix, my lord, at pages 140 through to 151 of the brief; it is

Appendix C.

MR. COVERT: Now, my understanding is that generally they have laid down, or have followed, the ton mile and car mile and per car revenue?

A. Yes, quite frequently. In some cases, a few cases I will say, the carriers attempt by some elaborate methods to show that the rate is reasonably compensatory but in a great majority of cases the rule of thumb system is used.

Q. They have made it clear, I think, in the Commission that there is no set rule?

A. Yes, I think that is right.

Q. And sometimes they apply one or more tests?

A. Yes.

COMMISSIONER INNIS: At the risk of appearing to illustrate Mr. Evans' point, I am wondering how far this change in 5 does mean that 2 is included. Yesterday we raised the question that 2 should be included in 5. Was the redrafting with the intention of meeting that point?

MR. FRAWLEY: I think our position now with regard to 2, sir, is that we think it should be there for clarity and emphasis. We are not prepared to quarrel with the suggestion that it is included in 5.

THE WITNESS: I might say that the term "reasonably compensatory" as used in the Interstate Commerce Act embraces both of those concepts but it seemed to me at least that the separation of them at least was desirable.

MR. COVERT: I want to follow that out. Do you find then that this makes it difficult for the railways from the point of view of delay and possible loss of revenue in the mean time?

A. Well that, I suppose, depends on what you mean by "delay". I have some information about that that I thought

might be helpful, that is some figures which were compiled by the Board of Investigation and Research in a study of the procedures of the Interstate Commerce Commission, and one of the charges frequently made is that it takes too long to get decisions through the Commission.

MR. EVANS: A little quicker than our Board here, Dr. Locklin.

MR. FRAWLEY: I would not mention that if I were you, Mr. Evans.

THE WITNESS: This study analyzed among other types of cases the long-and-short-haul cases. Now, I would perhaps refer you to this study if you wish to examine it more fully. It is entitled "Practices and Procedures of Governmental Control" and was published as House Document 678, 78th Congress, Second Session. In order to understand the figures it is necessary to explain the procedure and I think that is probably helpful. I will read some extracts, if that is satisfactory, relating to this:

"Applications for relief from the provisions of the fourth-section, upon receipt, are examined immediately to see that they comply with the regulations of the Commission with respect to form and content, and they are then acknowledged, recorded, and docketed, each being numbered in the order in which they are received. At the same time a notice including a general description of the rates, fares, and charges and the origins and destinations involved in each application is prepared and placed on the press table for the information of the public. Except in cases of emergency, orders granting relief are not entered until at least 15 days after notice to the public is given, so as to afford

interested parties an opportunity to file protests and petitions for hearing.

Each application is studied to determine the necessity and justification for the relief prayed and an investigation is made, so far as practicable from the records and information in possession of the Commission, of the alleged facts and circumstances presented in support of the relief prayed. If it appears that a hearing is necessary, or if one is requested, the application is assigned for hearing and the subsequent procedure in connection therewith is practically the same as that in other investigations by the Commission in which hearings are held, such as formal complaints and investigation and suspension proceedings. A very large proportion of these applications, however, are disposed of without a hearing of any kind, and in those instances in which hearings are held proposed reports are seldom issued and oral argument is had very infrequently." (That is, of course, to speed up the process) "Temporary relief is often granted pending final decision upon the application, and when action granting temporary relief or denying temporary relief is considered appropriate, it is always taken as soon as practicable after the application is received.

The purpose of the temporary relief is to permit the carriers to proceed immediately with the establishment of rates in connection with which the relief prayed appears, *prima facie*, to be justified".

Now, to turn to the figures I have with respect to the time consumed in these cases, I find that this study made by the Board involved the applications, that is the fourth-section applications disposed of by the Commission in the months of November 1940, February, May and August, 1941. There were 125 such cases. These were divided into two main groups. The first group consisted of those applications disposed of without hearing. Of the 125 cases, 93 were in this group. The other group consisted of those cases in which hearings were held. This group consisted of 32 cases - so 32 out of 125 involved hearings; 93 did not.

Of the 93 cases disposed of without hearing temporary relief was granted in 29 cases in an average of 27 days from the filing of the application. In the other 64 of the 93 cases temporary relief was not involved and the cases were disposed of in an average of 22 days from the filing of the application.

Of the 32 cases in which hearings were held there were 18 in which temporary relief was granted in an average of 39 days from the filing of the application. Now, of course from the railroad's point of view the final disposition of cases in which temporary relief has been granted is not an urgent matter, and such cases are disposed of more leisurely. The average time from the granting of temporary relief to final disposition of these 18 cases was 376 days. Now, that was referring to 18 of the 32 cases in which hearings were held.

Now, in 7 of the 32 cases in which hearings were held temporary relief was denied and final disposition of these cases took an average of 297 days from the filing of the application.

In 7 more, that is the rest of these 32 cases, in which hearings were held no action was taken with respect to temporary

relief and a final order was entered in an average of 284 days from the filing of the application. Those are the facts taken from this analysis.

Q. I think that is all I have to ask.

THE CHAIRMAN: Well Mr. Frawley, is that all?

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RE-EXAMINED BY MR. FRAWLEY

Q. I want to ask two or three question in re-examination, sir, My friend, Mr. Covert's questions have disposed of Mr. O'Donnell's cross-examination of yesterday with regard to delay and that sort of thing. Now, there was just another matter. Do you know, dealing with the matter of trucks, whether commercial operation of trucks is permitted through National Parks in the United States?

A. I don't know.

Q. Now, you have been telling my friend, Mr. Covert, in your last answer with respect to the time taken in the disposition of fourth-section cases before the Interstate Commerce Commission. Will you tell us something about the proportion of section 4 cases in which relief was granted? Have you something to say about that?

A. Yes, I was looking for some figures again. This is taken from a report of Senators Wheeler, Shipstead and Truman in a minority report of the Senate Committee on Interstate Commerce at H.R.1668 which was an appeal to modify the long-and-short-haul clause. In that report there is an analysis of the Commission's fourth-section orders made during the fiscal years of 1936 and 1937. During that period 1032 orders were issued. The number denying relief was 126 or 12.3%; 87.8% were granted. Now, ex-Commissioner or the late Commissioner Eastman of the Interstate Commerce Commission made an analysis of the

fourth-section application in which relief was requested on account of water competition and his analysis embraces the period from January 1st, 1930 to December 31st, 1937. In that period 306 applications were filed for relief from the fourth-section in order to meet water competition. In 239 of those cases out of the 306, orders were entered granting temporary or continuing relief; in 40, orders were entered denying relief.

(Page 13174 follows)

A. (Cont'd.) In 11, applications were still pending when he made his analysis, and in 16 the applications were withdrawn.

I might, for the interest of anyone concerned, point out that Commissioner Eastman said this:

"Last year I think I read over every case in which relief had been denied on account of water competition, and if you could also read them I think you would argue that the reasons given for denial were adequate."

The complaint had been made that the Commission was too strict in these cases involving relief on account of water competition.

MR FRAWLEY: Thank you, that is all.

COMMISSIONER INNIS: One final point, Professor Locklin, and this again comes back to points 2 and 5. I was wondering whether you would care to say whether in your opinion it would be more difficult to determine the compensatory character of a competitive rate for long haul, such as characterizes the main lines in Canada, than would be the case with the short lines in the United States, or comparatively short lines. I would like to make the point that the transcontinental line is not characteristic of American lines as it is in Canada, and because of the very long hauls involved it might be much more difficult to determine whether a rate was compensatory as a competitive rate than it would in the case of a short line?

A. I should not think there would be any more difficulty; possibly there would be.

Q. You do not think the element of overhead costs, for example, on say 2,000 miles of line or more, would be a little more difficult to allocate than would be the case on a shorter?

A. Well, of course, in determining the out-of-pocket costs, you see, or whether the rate -- as that phrase is here, "more than covers the additional expense incurred by the traffic to which it applies". There would not be very much allocation of overhead except under some condition, perhaps.

Q. Yes, perhaps allocation is not a very fortunate word. My only point is that if you carry traffic over 2,000 miles on such lines as we have in Canada, it may very well be compensatory because of the length of line that is involved, than would be the case if you were to carry it say over 500 miles?

A. Yes, I think that might be the case.

MR COVERT: I wonder if I might just ask two more questions.

EXAMINED BY MR COVERT:

Q. Doctor, perhaps the fact that there was a great deal of longer haul in some of the traffic, would mean that the rules of thumb, as to for instance ton-mile or car-mile revenue, might not be as good as they would on the shorter lines?

THE CHAIRMAN: Would you speak a little louder, Mr. Covert?

MR COVERT: Q. Trying to pursue Dr. Innis' question further, as to whether or not on a purely transcontinental line owned by one company as compared with several lines making up a transcontinental haul in the United States, whether the rule of thumb would be as applicable?

A. Well, I think you would have to recognize, if you were using revenue per ton-mile or revenue per car-mile as an indication of whether the rate was compensatory or

not, that you would have to take into consideration the length of the haul; that is, the longer the haul the lower that figure could probably be and still be reasonably compensatory.

Q. Then I wanted to find out -- I am sorry I omitted asking you this, doctor, before -- has it required a very large staff in the I.C.C. to look after these fourth-section relief cases?

A. I am sorry that I do not have any figures about that, but I think that it does not require a particularly large staff.

Q. They have a branch, do they not, which they call a fourth-section board? They have divisions in the I.C.C., and there is a fourth-section board?

A. There is a fourth-section board, yes.

Q. You do not know how large a staff is required?

A. No. I was just under the impression that it was a rather small group.

MR FRAWLEY: It is a branch of the Bureau of Traffic.

THE WITNESS: It is part of the Bureau of Traffic, yes.

MR O'DONNELL: Fairly extensive, on my information.

MR COVERT: I think that is all, thank you very much.

MR O'DONNELL: Just one question, my lord. I indicated to Mr. Frawley that I wished to ask it before he started. It is arising out of his latest revised draft.

CROSS-EXAMINED BY MR O'DONNELL:

Q. That section 2, doctor, of 314A as it now stands, provides for the protection, I take it, of rates

which might be in existence at the date this proposed statute would come into effect. What I wonder about is whether there is not some provision in the United States which allows for temporary relief -- or, rather, do you know the provisions for temporary relief?

A. I think I indicated that the Commission does grant temporary relief pending a final disposition of the new fourth-section applications. Now, it is true that in 1910, when our long-and-short-haul clause was made effective again, we were faced with a situation in which the rate structure contained thousands of departures from the long-and-short-haul rule, and making the long-and-short-haul clause effective in 1910 would have had the effect of making unlawful all of those violations without the Commission having had a chance to determine whether they were permissible departures from the long-and-short-haul rule; so we incorporated into the Act at that time a provision which protected the existing rates until they could be acted upon by the Commission.

Q. And, incidentally, I understand that many of them have not as yet been acted upon?

A. I think that is not correct.

Q. No ? Well, do you know--

THE CHAIRMAN: What was your question, Mr. O'Donnell?

MR O'DONNELL: My information was that some of them had not even yet been finally acted upon.

THE WITNESS: Several years ago I learned that there were a very few that had not been acted upon, because they involved questions of the jurisdiction of the Commission over international rates, but the others had been acted upon, and of course it was many years before those were disposed of, that is correct.

MR O'DONNELL: Q. About twenty-five years or more?

A. But of course the carriers were protected in the meantime.

Q. Now, is there not some provision at the present time which allows the tariff to go into effect upon filing, and that unless the Interstate Commerce Commission suspends it it becomes operative immediately and the railroads collect the rate?

A. Yes, there is a provision in the 1940 legislation, but I do not have it directly in mind, that was intended to make it possible for the railroads to get the rates into effect quicker, after fourth-section relief had been granted.

THE CHAIRMAN: Mr. O'Donnell, could you procure that legislation for us?

MR O'DONNELL: Well, I can try, my lord. Possibly Dr. Locklin has a---

THE WITNESS: Well, it must be in this---

MR O'DONNELL: It is in the Interstate Commerce Act.

THE WITNESS: It must be in the Interstate Commerce Act.

MR EVANS: It was passed in 1940, I think.

THE WITNESS: It was passed in 1940, yes.

MR FRAWLEY: I am sure Professor Locklin will be glad to have it referred to. We could extract it and hand it in, sir.

MR O'DONNELL: I think possibly Dr. Locklin refers to it at page 554 of his book:

"A second amendment in 1940 permits the carriers to file, along with their applications for fourth-section relief, tariffs or supplements to tariffs

containing the rates which are proposed to be made effective if fourth-section relief is granted. If fourth-section relief is granted by the Commission the new rates become effective on one day's notice."

THE WITNESS: I am not sure that that is an accurate description of this provision.

MR O'DONNELL: I thought there was a slightly different arrangement.

THE WITNESS: That is why I think it would be better to have you look it up in the Act and get it on the record. I did not have it before me when I wrote that paragraph.

MR O'DONNELL: Q. Do you see any difference or distinction which exists by reason of the fact that in the United States this section 500 of the Transportation Act is on the books, and that the Interstate Commerce Commission has control over water carriage and rates, and trucks, interstate trucking? Would not that facilitate the handling of these applications in the United States as compared to our situation in Canada?

A. Probably so. It enables the Commission to know what the rates of competitors are; but I might say that relief is granted in many instances to meet competition of carriers whose rates are not published. Relief is sometimes granted to enable the carriers to meet competition of private trucking.

THE CHAIRMAN: Q. That is, trucking not regulated by the Commission?

A. Yes.

MR FRAWLEY: Or by anyone.

THE WITNESS: Yes; and relief is sometimes granted to enable the carriers to meet competition of water carriers who are under the exemptions and who are

perfectly free to reduce their rates further at any time, and I might say that the Commission has devised a method of dealing with that particular problem which is interesting. In a few instances it grants what is called flexible relief; that is, it will allow the carrier to reduce its rate to meet say water competition and then provide that if the rates of the water carrier are reduced the railroad may further reduce its rate, maintaining a certain differential. Then the Commission will naturally fix a floor below which the railroad could not reduce the rate.

MR O'DONNELL: Q. Under the American system, if the water carriage or the water competitor disappears and the competition ceases, the American roads are not allowed by reason of the disappearance of the competition to increase their rates, are they?

A. Yes.

Q. They are?

THE CHAIRMAN: To increase what?

MR O'DONNELL: To increase the rates.

Q. For instance, taking the situation here, if the water competition between say Montreal and Vancouver were to cease, as I understand it, under our law the railroads would be entitled to increase the rates to the normal rate; now, my information is that that is not possible in the United States.

A. Well, you would think so by reading the statute you would think that your statement was correct, because there is a provision in the statute -- I do not remember just where it is -- which provides that if a railroad reduces its rate to meet water competition and then water competition disappears, the carrier may not increase the rate without showing that there is some justification for

it other than the elimination of water competition.

Q. That is subsection 2 of section 4, I think, of the Interstate Commerce Act?

A. Yes, but there is a decision of the Supreme Court which says that that does not apply when relief is granted from the fourth section on account of water competition, because if the discrimination was found to be not unjust because of the existence of water competition, and the water competition disappears, then the discrimination does become unjust, and so the railroad ought to increase its rate in that case. I could find that decision.

Q. Subsection 2 of section 4 of the Act is very short; it reads:

"Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition."

That is the language of the section; you say that that is qualified by this Supreme Court decision?

A. Yes; that is inoperative in cases where fourth-section relief was granted.

Q. How recent is that decision, doctor, that you refer to?

A. I can find it here in a few minutes.

Q. Well, you might be good enough, possibly, to find it a little later.

A. All right.

Q. So that, on your understanding of the situation, if the competition, the water competition, for instance,

were to disappear, you would consider it right and proper that the railway should be entitled to raise its rates to the normal rate?

A. Yes, it would be entitled to -- they would be in fact required to remove the discrimination. Just how they did it, of course, would be--

Q. Their own business.

THE CHAIRMAN: You are asking Dr. Locklin whether he would consider it right and proper. He may consider it right and proper, and the law may be otherwise.

MR O'DONNELL: Well, I am just asking for his view on the situation, in view of the fact that we are discussing new legislation.

THE CHAIRMAN: It is his view that you want, is it?

MR O'DONNELL: Yes, your lordship.

Q. I wondered, doctor, if you had any hand or collaborated in any way in the preparation of this other proposed new section 313A?

A. No.

Q. And if there is any reason for the distinction which prevails or which is set out in 313A as compared with 314A, concerning the paragraph numbered 2 in 314A?

A. No, I had nothing to do with that.

Q. You had nothing to do with that?

A. No.

MR O'DONNELL: Then possibly Mr. Frawley has, and I understand from his latest pronouncement that he has a new---

MR FRAWLEY: Thank you for the word "pronouncement". I did not expect to file this, my lord, until we were finished with Professor Locklin, which I hope will happen at any moment, but, in fairness to my friend---

MR O'DONNELL: Well, if we have a later edition we might as well have it in now, so that we can all look at it before Dr. Locklin goes away.

THE CHAIRMAN: What is this, Mr. Frawley?

MR FRAWLEY: This is 313A, sir, which was offered at the time Mr. Darling was on the stand in connection with his Rate Principles brief. The change is a very short one, and I would like to call the attention of the Commission to it.

THE CHAIRMAN: Are you substituting a new draft?

MR FRAWLEY: That is right, sir. It is a repetition with one or two short changes, to which I will direct the Commission's attention.

MR EVANS: This, I might suggest, is an example of elastic supply.

MR O'DONNELL: And ingenious.

MR FRAWLEY: The law is always elastic, my lord. This change, sir, is a change in subsection 1, subparagraph (ii). It formerly read---

THE CHAIRMAN: Mr. Frawley, pardon me a moment. You remember the other day when you offered this new section -- it is a new section, isn't it?

MR FRAWLEY: 313A, yes, sir.

THE CHAIRMAN: It does not amend a section; it is a new section?

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: I asked you to consider whether it had an effect on any of the other sections, and whether any of those should be amended to conform with that. Have you done that?

MR FRAWLEY: We think this will fit into the present Railway Act.

THE CHAIRMAN: You think it will fit in as you

have drafted it now, without requiring any modification of the other sections?

MR FRAWLEY: Of the other sections. That is my submission at the moment, sir.

The changes first are with respect to sub-paragraph (ii) in subsection 1. It read, "be such" -- that is, it is defining competitive toll -- "as to enable the carrier to show a reasonable expectation of improved net earnings as a result of the making of such toll." It now reads, "be such as to enable the carrier to show a reasonable expectation that, as a result of the making of such toll, net earnings will be greater than they would be in the absence of such toll."

Then in section 2 the words were "then and in such case the Board shall order and direct the making of such changes in the competitive tolls", and it now reads, "then and in such case the Board shall order and direct the company to remove such toll or to make such changes therein as will satisfy the requirements of Sub-section (1)."

Then sub-paragraph 3 is shortly changed by adding the word "unduly" before the word "prejudice" and by rearranging the language, that is all, sir. It now reads, "shall not unduly prejudice the geographical advantage of other origins or destinations."

THE CHAIRMAN: It seems to me, just by this very cursory reading I have given it, that you have a repetition there of some of the things in your 314A.

MR FRAWLEY: Yes, sir.

THE CHAIRMAN: Are you doing that purposely?

MR FRAWLEY: Yes, I am doing it with knowledge that it is being done, sir.

THE CHAIRMAN: Good draftsmanship tends to elimin-

ate the repetitious phraseology.

MR FRAWLEY: Subject to this, sir: I look upon the provisions with respect to long and short haul as being sufficiently important in themselves to warrant a section in the Act which would constitute, as it were, a code. We find the same thing in the present Act, sir, and therefore, in my respectful submission, it would be well to have a separate statute, as it were, almost a separate statute, in the form of a section with regard to long-and-short-haul discrimination and the way in which it might be practised. The new section 313, sir, is merely to meet the feeling that ran through many submissions to the Commission since we started, that there should be some better control by the Board of competitive rates, and so this new section section 313 is here. It is intended to lay down some principles that never were there before, sir, and, to the extent that there is some conflict, I think it would be, if I may say so, a perfectly harmless conflict---

THE CHAIRMAN: Well, just a cursory reading brought that to my notice.

MR FRAWLEY: That is right, sir; I acknowledge that.

THE CHAIRMAN: It may be, as you say, that we ought to spread the same subject over twice, in order to clarify the situation we are dealing with. One of your sections refers to the long-and-short-haul rule.

MR FRAWLEY: Only; and it is--

THE CHAIRMAN: The other refers to competitive rates generally.

MR FRAWLEY: That is right, sir, generally; and it is particular, the long-and-short section is particular.

THE CHAIRMAN: If your proposals are adopted,

that will be moved out by final draft.

MR FRAWLEY: Yes, sir.

Now, that might be inserted into the record at this point -- 313A.

REVISED 9th DECEMBER 1949

COMPETITIVE TOLLS

New Section 313A

- (1) A competitive toll shall at all times
- (i) cover the additional expense incurred by the movement of the traffic to which it applies.
 - (ii) be such as to enable the carrier to show a reasonable expectation that, as a result of the making of such toll, net earnings will be greater than they would be in the absence of such toll.
 - (iii) be no lower than necessary to meet effective competition;
- and it shall be the duty of the Board to maintain such continuous examination of the competitive tolls as will assure that at all times the requirements of the competitive tolls as in this Section defined are being satisfied.
- (2) If, either as a result of the Board's examination of the competitive tolls provided for by Sub-section (1) or as a result of the Board's investigation following upon a complaint, it has been established that any competitive toll does not satisfy the requirements of Sub-section (1), then and in such case the Board shall order and direct the company to remove such toll or to make such changes therein as will satisfy the requirements of Sub-section (1).

- (3) Where a competitive toll is established for the purpose of meeting market competition, such toll shall not unduly prejudice the geographical advantage of other origins or destinations.

MR O'DONNELL: One question possibly Mr. Frawley could answer, my lord, and that is the reason for the distinction as between the wording of section 2 of proposed 314A and the wording of section 1, subsection 1, of section 313A. The wording is not the same. In the one instance it is "the competitive point" that the rate proposed---

THE CHAIRMAN: That is what I say; I notice that.

MR O'DONNELL: In 314A the wording is "more than covers the additional expense incurred by the traffic to which it applies", whereas in 313A it is merely "cover the additional expense incurred by the movement of the traffic to which it applies." I wonder what the use of the word "more" indicates, or why it is in there.

MR FRAWLEY: I think, sir, that the answer is -- and it may be a good answer -- that it is what Mr. Walker put to the Board on the 2nd of May. I think Mr. Walker used that expression.

MR O'DONNELL: Mr. Walker was speaking of competitive rates, and, after all, 313A deals with competitive rates just as does 314A, because 314A is merely an example of a competitive rate, and at the present time under the statute a very simple, short, concise subsection 314(5) consisting of seven lines handles the problem.

THE CHAIRMAN: That is it, you see, Mr. Frawley. If you are going to repeat the same requirements, you should make your language exactly the same. Why call in

the one case for a rate which more than covers additional expense, and then in the other case call for a rate that covers additional expense ?

MR EVANS: In that same connection, my lord, if you will observe sub-clause 3 of the new section 313A you will find that the kind of competition is expressed in different language. In this case it is "effective competition", in the other case "active and compelling competition". Then this language at the beginning, "at all times", offers an almost impossible situation, because it strikes me that you never could have such continuous study that at any given moment this rate should comply with all those conditions. Let us assume it goes into effect and it complies with all these conditions; now, somebody has got the duty of seeing -- I suppose the railways have the duty of seeing -- that every day of every year, at all times, this rate complies with those conditions. To me it has got almost to the point of absurdity, with these drafts and redrafts coming in.

MR COVERT: Mr. Chairman, I wonder if perhaps---

THE CHAIRMAN: It is better to have these inconsistencies shown up now than to wait and find them afterwards.

MR COVERT: That is what I was going to suggest, Mr. Chairman. Now these points are raised on the record, and there may be some raised later, and it will give Mr. Frawley perhaps time to look them over and think about it, and I do not think we should take action now, because certainly they have just been placed before us now; nobody has had an opportunity to give them any consideration.

MR O'DONNELL: We had an opportunity to point out some inconsistencies.

THE CHAIRMAN: Well, you know now, Mr. Frawley,

without having it told to you the last days of the Commission's work, that there are certain things here that apparently must be considered. I am not analysing them closely now at all, but I notice in one case you talk about "active and compelling competition"; are those words used again in the other?

MR COVERT: "Effective".

MR FRAWLEY: "Effective competition" is used in one, sir.

THE CHAIRMAN: There again, why put the case of necessity? Why put those construing those sections to the work of finding out whether you mean the same thing or whether you do not, because the presumption is that the Legislature did not mean the same thing when it used different language.

MR FRAWLEY: That certainly is what would be said, yes, sir; I quite appreciate that.

THE CHAIRMAN: You wish to avoid that.

MR FRAWLEY: Yes, and I welcome the opportunity of making that or such other changes as might bring these two into better conformity.

THE CHAIRMAN: I think you had better consider the advisability of recasting those two.

MR FRAWLEY: But for my friend Mr. Evans to say that this imposes day-to-day burdens upon the company,-- I submit the contrary is quite the fact.

THE CHAIRMAN: Mr. Evans may be right -- I do not know -- but in any case I think you ought to draft it again carefully. Draft both of them to make sure that you are not producing objectionable features, and that you are not giving the Board and the courts something that will puzzle them.

MR FRAWLEY: I quite agree; I quite agree that

there should be strict conformity.

MR O'DONNELL: Just one other observation, my lord: I wonder whether this paragraph or this clause number 3 of section 314A, which reads, "The rate to the intermediate point is just and reasonable" -- is that any other kind of just and reasonable rate than the one provided for by section 325(5)? Is that a special type of just and reasonable rate? Just what that language means, and why it should be in 314A, when it is certainly covered, as far as I understand---

THE CHAIRMAN: Where is it in 314A?

MR O'DONNELL: It is in 3, sub-paragraph 1, the further sub-paragraph 3.

MR FRAWLEY: The answer to that---

THE CHAIRMAN: As I pointed out the other day, section 325, I think, provides that all rates must be just and reasonable.

MR O'DONNELL: Yes.

THE CHAIRMAN: That is the dominating characteristic of rates; they must be just and reasonable. I do not see any harm in saying it there.

MR FRAWLEY: Exactly.

MR O'DONNELL: I am just wondering whether it is any different kind of just and reasonable rate from the one provided for in 325.

THE CHAIRMAN: So long as the new section uses exactly the same language as 325, there cannot be any misconception, because 325, I take it, is the governing section. No rate could be allowed to stand at all if it were found to be unjust and unreasonable.

MR. EVANS: My lord, I would like to follow my friend because I think there is a point there and a very substantial point. This legislation and the use of this terminology emanates from a different jurisdiction, that is to say, this kind of legislation comes from the United States. Now, in the United States there is an obligation on the railways to have freight rates just and reasonable. There is, except in certain cases where the Commission has intervened on complaint or on its own motion, there is no equivalent section which establishes a just and reasonable level of rates in the beginning as we have in Section 330. Now then, on this matter my submission would be, and I would like perhaps at some time later to develop this, but I think the point ought to be made that our rates having had the approval as to the standard rates under Section 330 are, *prima facie*, just and reasonable rates. Now then, under this legislation the railways might very well be forced to take a different kind of standard of just and reasonable rates because some onus is on them to establish something as a just and reasonable rate. Now, would that onus be satisfied by simply saying that the rate in question is lower than that which has been approved under Section 330? If it is so, then you do not need this in the legislation. Now, if some other standard of reasonableness is to be applied to these rates, then, of course, you might have some desire or there may be some necessity of putting it into the legislation, but if the rates are to be taken as just and reasonable, as we say they are under our legislation, then there is no need to prove again when you go on this application, and the whole difference, in my humble submission is due to a misconception on the part of my friend as to the differences in the legislation in the United

States which give rise to this kind of a requirement. There is no just and reasonable rate in the United States until it has been complained about or investigated. There is just the duty to have them there. In our case we cannot charge a single toll without first having the approval under 330 and we say that makes the rates just and reasonable.

THE CHAIRMAN: Yes, you have the approval under 330 and then you have a duty placed upon the Board by the powers given to it under 325 (5) that they shall fix, establish, determine and enforce just and reasonable rates.

MR. EVANS: Yes, it merely means that they are not bound by the approval in 330. They may inspect any rates.

THE CHAIRMAN: But all rates must be just and reasonable. Well, there is something in that, Mr. Frawley. When you import language from another jurisdiction sometimes you must be careful that you are not creating confusion with the language which may be used in our legislation.

MR. FRAWLEY: I quite appreciate that, sir.

THE CHAIRMAN: Then I do not think there is any need for any further argument but do remember that when you do consider again these two drafts which you have, bear these things in mind.

MR. FRAWLEY: It is the mechanics of the matter. If the Board accepts my argument in principle, surely the mechanics of it can be worked out and I will do all I can to put the actual mechanics of it before the Commission.

THE CHAIRMAN: That is quite right but your language may distort our view of the mechanics.

MR. FRAWLEY: I appreciate that.

THE CHAIRMAN: Well, you have ample notice now and between now and the time these things will be finally considered you will no doubt be able to go over it again.

MR. FRAWLEY: Now, while we are on that subject, sir,

and I hope it does not provoke more of the same argument that we have just had, I do have a further commitment in the matter of proposed legislation, and that is with respect to the Stewart-Harries brief dealing with Industrial Location and I hope that I can file it and not precipitate another argument of the kind we have had because I do want to get on with my remaining briefs.

THE CHAIRMAN: Well, if you do file it it must be considered and ultimately argued at some time.

MR. FRAWLEY: Yes, but I mean now.

THE CHAIRMAN: Well, it may hasten things along if there are any defects to have it out right now.

MR. FRAWLEY: May I hand it in now, sir, and then proceed with my two remaining briefs and that is the best way I think.

THE CHAIRMAN: What do you call it?

MR. FRAWLEY: It is the proposed statutory changes arising out of the Industrial Location in Alberta brief.

THE CHAIRMAN: Are all these statutory changes meant to affect the Railway Act?

MR. FRAWLEY: Oh yes, they arise, sir, out of the brief that we put in with respect to the Industrial Location and the way in which the present freight rate structure affects industrial location.

THE CHAIRMAN: Then those proposed amendments under those two sections will be the legislative embodiment of what you want?

MR. FRAWLEY: That is right. You may recall that when Mr. Harries was on the stand, some questions came up and I said I would file the statutory changes which we think arise out of his brief.

THE CHAIRMAN: Now then, you will be giving copies, of course, to the Railway Counsel and to other provinces

and if anybody sees any point in this draft that ought to be discussed now, well we have a discussion but in the mean time you want to proceed.

- - - - -

Proposed statutory changes arising out of the "Industrial Location in Alberta" brief filed by Mr. Frawley.

- - - - -

MR. FRAWLEY: I have two more briefs I have to put in, sir, and I would hope to get these in before the end of the day.

THE CHAIRMAN: When you have progressed further with one brief, or maybe both briefs, we will then find out whether or not anybody has anything to say about them.

MR. FRAWLEY: That is right, sir. Thanks very much.

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MR. H. J. DARLING, RECALLED

EXAMINED BY MR. FRAWLEY

Q. We will now proceed, sir, with the brief which is called "Interline Rates, The Freight Classification, The Carload Mixing Rule" and I think we can put this brief in rather quickly, sir. Mr. Darling, would you please proceed with such preliminary comment as you wish to make by way of describing the purport of this brief and proceed to put it into the record?

(The following is a brief
entitled "Interline Rates, The Freight
Classification, The Carload Mixing
Rule")

(Page 13200 follows)

Interline Rates

The Freight Classification

The Carload Mixing Rule

Errata

- p. 11 - in last line of index "Reading" should read "Headings".
- p. 16 - line 15 - "266 I.C.C. 447" should read "262 I.C.C. 447 at 701".
- p. 28 - last line - Combination rate Lethbridge to Melville, "126" should be "123".
- p. 43 - "Distinctive Readings" should read "Distinctive Headings".

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INTERLINE RATESI. Introduction

The problem which will be discussed in this Submission involves the method of establishing rates on traffic which moves from a point on one railroad to a destination on another railroad. Originally, it may be assumed, rate systems were limited to the lines of individual railroads and interline traffic was charged combinations of local rates. No problem of excessive charges would arise here were it not for the fact that nearly all freight rates are tapered for distance. The rate for the lowest mileage block is relatively high--this has been explained as an allowance for terminal expenses which do not vary with distance and are involved in all hauls--while the increments for the following mileage blocks become successively smaller as the distance increases. When traffic moves over two or more lines, the straight combination rates contain the heavy initial increments two or more times, so that a considerable difference arises between rates made by combinations of local rates and rates based on a single-line haul. This can be illustrated by the following table:

TABLE 1

Illustration of the difference between
Single-line and Combination Rates

Increments in cents per cwt. added for each mileage block

<u>Mileage Blocks</u>	<u>Single-line haul</u>	<u>Two-line haul ★</u>	<u>Two-line haul ★★</u>
25	10	10	10
50	3	3	3
75	3	3	10
100	3	3	3
125	2	10	3
150	2	3	3
175	2	3	2
200	1	3	2
225	1	2	2
250	<u>1</u>	<u>2</u>	<u>1</u>
Rate	<u>28</u>	<u>42</u>	<u>39</u>
★ 100 miles by first carrier, 150 miles by second carrier.			
★★ 50 miles by first carrier, 200 miles by second carrier.			

It will be apparent that the amount of the disparity between single-line and interline rates will depend on (a) the amount of the initial increment, (b) the degree of tapering in the subsequent increments, and (c) the relative distances of the two local hauls. As can be seen from the foregoing table the lowest combination rates will result from making one of the local hauls as short as possible. It is to the advantage of the shipper to pick an interchange point as close as possible to either the point of origin or destination of the shipment.

The methods used in making interline rates can be classified according to three general types:

- (1) Straight combinations of local rates, made over the interchange point that produces the lowest rate.
- (2) Rate calculated on through mileage over shortest route over which carload traffic can be interchanged, i.e. by treating all lines as part of the same system, regardless of the number of individual railroads concerned.
- (3) Methods intermediate to (1) and (2):
 - (a) Rates with through mileage used as basis, with arbitraries added for two-line hauls.
 - (b) Combination of local rates used as basis with arbitraries deducted on interline hauls.

The development of interline rates can be described as a gradual progress from the first method above--straight combination of local rates--to the second method by which interline rates are treated the same as single line rates in areas served by numerous separate railroads. The first method is often productive of confusion in the rate structure. Greater uniformity in such cases becomes a necessity to remove the innumerable cases of local discrimination that arise. Instead of creating favorable conditions for the movement of traffic, combination rates set up a series of barriers which are purely artificial in nature, being the result of the extraneous series of events

that have established the separate railroad corporations within their present territories.

In the United States substantial progress has been made toward making interline rates on the same basis as single-line rates, both territorially and interterritorially. At the present time, interline rates made on any other basis are definitely exceptions to the general rule. They are still found, for example, in the arbitraries above normal rates which are allowed certain short lines or weak roads. On the other hand, no uniform method of making interline rates has ever been adopted in Canada. In certain instances, concessions have been made by the railroads, in others the Board has prescribed some measure of relief. No general policy of reducing interline rates to single-line rates has ever been laid down, however, and the Board has not drawn any broader conclusions from its decisions in specific cases in favor of reduced interline rates.

II Interline Class Rates in Canada

A. Eastern Town Tariffs

For many years in Ontario-Quebec territory it had been the general practice of the railroads to reduce certain interline town tariff rates below the total of the straight combinations of local rates. This method became firmly established as the normal method in these cases so that when the carriers proposed to cancel these interline rates on November 30, 1916, the Board intervened and compelled their retention. It is interesting to note that in this case, Joint Rates, (1916) 6 J.O.R. & R. 406, the Board held that it was the companies' duty under the Act to file "joint tariffs covering transportation in cases where the movement over two or more companies is necessary in order to establish a continuous route and through billing". In a supplementary judgment on the same issue 6 J.O.R. & R. 407, the Board held that rates based on the sum of the locals would work a discrim-

ination against traffic affected. These judgments would appear to have held that "joint tariffs" as mentioned in the Act required the publication of rates at less than the combination of local rates. Nevertheless, the important implications of these judgments were not developed in subsequent cases involving interline rates, so that they cannot be said to have had any effect upon combination rates.

The issue of joint class rates in Eastern Canada came up again in 1919. At that time the Chief Traffic Officer of the Board worked out a method by which joint rates in this territory were to be compiled. The basis was the through mileage rate on the town tariff scale with certain fixed increments to be added on all interline hauls. These amounted to 8 cents per cwt. for first class, 7 cents for second class, 6 cents for third class, 4 cents for fourth class, and $2\frac{1}{2}$ cents for all lower classes. At the same time twenty transfer points within Southern Ontario were specified to be used in connection with these rates. While the Board did not commit itself to the principle of allowing single line rates for interline service, nevertheless the unfairness of the combination rates was recognized. It appears to have been taken for granted that to establish reasonable rates in this case considerable reductions below the combination rates would be required.

The Board's Order 28618 of August 1, 1919, required the establishment of interline town tariffs based on the above method by not later than October 1, 1919, 9 J.O.R. & R. 190. The railways applied to the Board for a postponement and reconsideration of this Order. In the result the Board issued Order 29495 of March 23, 1920, which rescinded the previous Order without giving particulars as to the considerations that had prompted this reversal of judgment. It thus happened that the contemplated system of interline class rates within Ontario-Quebec Territory was never actually put into effect. Interline class rates do exist, as already stated, between certain stations on the Canadian National and Canadian Pacific in this territory, but these consist for the most part of rates to and from stations

on formerly independent lines whose rates have been left undisturbed when they were absorbed into one or other of the two major systems. There are, for example, interline rates between Canadian National stations on the one hand and Quebec Central and former Algoma Eastern stations on the other, although the latter lines are now integral parts of the Canadian Pacific System. Similar rates exist between Canadian Pacific stations and stations on the Niagara, St. Catherines and Toronto Railway which forms part of the Canadian National System.

B. Class Rates in Western Canada and between Eastern and Western Canada

No interline rates less than the sum of the locals apply on standard and distributing class rates between Canadian Pacific and Canadian National points in Western Canada although rates to and from Northern Alberta stations to stations on either of the two major systems are made on the basis of continuous mileage. In the Vancouver terminal rates, short-line mileage appears to have been used to some extent in making rates to Canadian National points in Southern Alberta and to Canadian Pacific points in Northern Alberta.

The class rates applying between Eastern and Western Canada make almost no distinction between interline and single line rates since it is possible to route traffic via one line to Fort William and via the other beyond Fort William at the same rate as for a single-line haul throughout. The Fort William terminal class rates, which comprise the Western factor in these rates, although effective on both railroads, do not strictly fulfil the requirements of interline rates as advocated in this Submission. The distances used in calculating these rates, as for other class rates in Prairie territory, are the shortest distances via one railroad exclusively. Where such single line routes are circuitous, the reduction in mileage by using the shortest interline route may be considerable.

III Interline Commodity Rates in Canada

A. Eastern Canada

The method of making single factor commodity mileage rates has never been the subject of a comprehensive investigation by the Board. In 1922, however, in response to complaints, the Chief Traffic Officer of the Board drew to the attention of the principal railroads in Eastern Canada the excessive rates which resulted from the application of straight combinations of local rates for interline hauls. See Memorandum on Interline Rates, 12 J.O.R. & R. 372. At that time deductions from the combination rates were made only for agricultural limestone, cordwood and slabs, fertilizers, grain and grain products, lumber and sugar beets. In spite of the unreasonableness of the combination rates on certain other commodities no order was issued by the Board for the establishment of more reasonable bases. It was merely "suggested" to the railroads that they might extend the reductions on joint hauls to a great many other commodities. This suggestion brought from the carriers what must be described as the minimum concession necessary to comply with the Board's request. The railroads amended their local mileage tariffs, not the so-called point-to-point tariffs, to provide for a deduction of one cent per cwt. when the local rate was over $7\frac{1}{2}$ cents per cwt. and one-half cent when the local rate was greater than 4 cents and less than $7\frac{1}{2}$ cents. This provision is still in effect although its terms were slightly modified by the 21% Increase in 1948, in that the reduction of one cent now applies only to local rates over 9 cents per cwt. The maximum reduction granted on interline rates by this method is thus 2 cents per cwt. which leaves the objectionable features of the combination rates largely undisturbed. It is difficult to agree with the Board's estimation of this "concession" as providing "a considerable measure of relief". See 12 J.O.R. & R. 372 at p. 373.

B. Commodity Mileage Rates in Western Canada

There is no uniform policy on interline rates in Western

Canada. On important commodities such as coal, lumber, fertilizers from Warfield, B.C. and livestock to Vancouver, interline rates the same as or only slightly higher than single-line rates are in effect. The interline coal rates were prescribed by the Board in the Western Rates Case 1914, and the interline lumber rates were established by the railroads in 1940. For the most part, on other commodity mileage rates the only reduction in local rates is one cent on each factor for rates over 9 cents and $\frac{1}{2}$ cent for rates between 5 and 9 cents, the same as in Eastern Canada. This leaves a number of commodities for which no commodity mileage scale of general application is published in the tariffs and which, therefore, are not eligible even for these reductions. Rates on these commodities, e.g. cement, salt, sewer pipe, are generally published as specific point-to-point rates, the base for which is either an unpublished commodity mileage scale or the distributing scale. It should be noted that the standard reductions will not always apply to both local rates, since commodity mileage rates are often available only at the point of origin. Unless the terminating carrier publishes commodity mileage rates of general application, or specifically applying from the point of interchange, the minimum deductions on interline hauls would not apply.

The following summary of the interline rate structure on selected commodities is intended to be illustrative of the different methods in use and their effects, and while it includes many of the more important commodities it does not claim to be exhaustive.

(1) Coal:

The coal rate structure in Western Canada is an important exception to most commodity rate structures in Western Canada in that interline rates considerably lower than the combination of the locals have been in effect for many years. In the Western Rates Case, 1914, the Board held that reduced interline rates were desirable in the case of coal and prescribed that on any two-line movement the through rate should not exceed 20 cents per ton, over and above the rate for a

corresponding distance on a single line movement.[†]

Subsequent increases and decreases in coal rates have slightly altered the effect of this judgment but at the present time interline rates are in general no more than 30 cents per ton above what they would have been if based on through mileage.

This judgment of the Board has had far-reaching effects on the coal rate structure in Western Canada. The effect on coal rates from the Drumheller coal fields, which are served by both railways, is shown in the map in Appendix A. From the Drumheller area to points on the Canadian Pacific in Northern Alberta and Saskatchewan, the shortest all-Canadian Pacific route is via Calgary, Moose Jaw, or Regina. In each case widely circuitous routes are involved. The map shows the Canadian Pacific points to which the coal rates from the Drumheller area have been reduced as a result of the Board's order prescribing joint rates. It will be noted that practically all Canadian Pacific stations in the northern part of Saskatchewan and Alberta are affected. It is interesting to note that even on movements between two exclusively Canadian Pacific points such as, for example, Carbon, Alberta, and Coronation, Alberta, the rates have been greatly reduced by virtue of the fact that it has been possible to calculate the mileage via the Canadian National line from Drumheller to Stettler, Alberta. The pervasive effect of this principle on the rate structure is thus very great. In the case of the coal rates, it has been a major factor in removing local discrimination in rates. The producing areas and the markets have been linked in one common system of rates, regardless of the ownership of the shortest routes.

Unfortunately the decision on interline coal rates in the Western Rates Case was not generalized so as to require the establishment of joint-line rates on other commodities and on the class rates in Western Canada. Although the principles involved are essentially the same as for other class and commodity rates, the tendency has been to regard the establishment of interline rates as proceeding from con-

† This part of the Western Rates Case is available only in Canadian Freight Association Publication No. 538 at pp. 129, 130.

ditions peculiar to the commodity involved although what actual difference exists between coal traffic on the one hand and, say, cement or brick traffic on the other in this matter is difficult to discover. If anything, with relatively few points of production, the lack of interline rates is a much greater hardship in the case of the latter commodities.

(2) Lumber:

The lumber rates in Western Canada were not on a uniform basis up to 1940 when the railways undertook to revise the whole structure at the time of the establishment of Agreed Charges. Up to this time different mileage scales applied in different parts of the Prairies, and few, if any, interline rates were published. At this time the mileage rates in the Prairies were first reduced to a common scale, the effect of which was to lower the single line rates in many cases. At the same time interline rates were published from both Canadian National and Canadian Pacific points at a level approximately 1 to 2 cents higher than the rates for single hauls for the same distances. This reorganization brought about a desirable degree of uniformity in the lumber rate structure within the Prairies. The rate anomalies caused by the use of combination rates instead of joint through rates based on short-line mileage were largely eliminated.

Typical effects of the establishment of interline rates on lumber in Western Canada are illustrated in Appendix B. From local stations on both railroads rates to points on the other line were considerably reduced. The reduction in local rates shown in Part 1 of Appendix B is largely due to the adoption of the new uniform scale of rates for Prairie territory.

(3) Cement from Exshaw, Alberta:

The bulk of the cement produced in the Prairie Provinces comes from either the Winnipeg area or from Exshaw, Alberta, 57 miles west of Calgary on the Canadian Pacific main line. Rates on cement from Exshaw,

an exclusively Canadian Pacific point, are published on a point-to-point basis to stations on both railways. The rates published to Canadian National stations are combination rates consisting of the local Canadian Pacific rate from Exshaw to Calgary and the local Canadian National rate beyond.

Because of the fact that the cement rates are published on a point-to-point basis and not as a mileage scale, they are not subject to the standard reductions of one cent in each local rate which apply only on mileage rates. While the cement rates are based on a mileage scale, the latter is not published in the tariffs, so that for this reason the full combination rates are still charged.

The map in Appendix C shows the cement rate structure from Exshaw to Alberta stations. The effect of using combination rates on cement from Exshaw to Canadian National points is clearly brought out. It will be noted that the rates to Canadian National points are as much as ten cents per cwt. higher than rates to adjacent Canadian Pacific points. With the closing down of the cement plant at Marlboro, Alberta, 14 miles west of Edson on the Canadian National main line, the nearest source of supply on the lines of the Canadian National is at Winnipeg.

There are two interests affected here--that of the consumer located on the line of the terminating carrier and that of the industry itself. Not only the production of cement, but of building brick, sewer pipe and drain tile, is concentrated at comparatively few points in the Prairie Provinces, and certain of the more important of these are served by only one railway. Having in mind the restricted sources of supply, the need for interline rates based on through mileage is, if anything, greater for these commodities than for coal or lumber where they have already been established. On low-valued commodities the effect of combination rates can be extremely burdensome. In many areas served exclusively the Canadian National in Alberta there is often no alternative to the payment of combination rates on cement.

The second interest involved is that of the industry and the community dependent on it. For example, building materials from the

Medicine Hat area must compete with products manufactured at points served by both railways which have the advantages of single-line rates throughout Western Canada. This is a disadvantage which is not geographical but which lies solely in the rate structure.

(4) Brick from Medicine Hat and Redcliff, Alberta:

Medicine Hat and Redcliff, Alberta, are important centres of production of brick and other building materials. As both points are served by only one railway--in this case the Canadian Pacific--the matter of interline rates is of direct importance to the industries located in that area.

Brick rates, being published as mileage rates, receive the reductions of one cent per cwt. in local rates on interline hauls. As in other cases where this reduction is granted, the relief given is small compared to the extra burden of charges caused by the use of combination rates. Appendix D, Part I, illustrates the effect of combination rates on the market territories of plants served by a single carrier, by showing the lines joining the points having equal rates on building brick from Redcliff, Alberta, and from Winnipeg. Owing to the lack of through mileage rates from Redcliff to Canadian National stations, the Winnipeg territory, i.e. the area to which rates from Winnipeg are lower, on Canadian National lines covers most of Saskatchewan and extends into Alberta. If the rates were based on through mileage the dividing line between the two territories would lie in Central Saskatchewan, passing through points approximately equidistant from Redcliff and Winnipeg.

Part 2 of Appendix D gives the number of carload shipments of brick from Medicine Hat-Redcliff area to stations in Prairie territory for the year 1947. The movement totalled 1,190 cars of which 187 cars were destined to local Canadian National stations. A considerable part of the interline movement was to stations in Northern Alberta and Saskatchewan.

(5) Seed from Coronation, Alberta:

The effect of the lack of interline rates on traffic originating at small local stations in Alberta can also be illustrated by the example of rates on brome and grass seed shipped from Coronation, Alberta. In Appendix E the shipments of seed under the Provincial Crop Improvement Program for the three weeks ending April 15, 1949, have been plotted to show the local rates to Canadian Pacific stations and the combination rates to Canadian National stations. There is a considerable interline movement of seed from Coronation at l.c.l. rates.

C. Non-competitive Areas and Circuitous Routes in Western Canada

Where there are no interline mileage rates in Western Canada irregularities in the rate structure arise merely from the particular way in which the separate systems have been built up. For example, the great era of railroad construction in the West ended before the Canadian Northern could complete its projected line into Medicine Hat and the Grand Trunk Pacific its line into Lethbridge. Had either of these lines been completed, the rate structure in Southern Alberta would be quite different in many respects from what it is now. It frequently has been little more than a matter of chance whether an area is now served by more than one railway. It is both unreasonable and undesirable that the rate structure should be permanently distorted because of such secondary effects of the planning and building of the railways. The absence of interline rates has the effect of conferring unjustifiable advantages upon competitive points at the expense of non-competitive points. In the Prairie Provinces very few cities or towns possess any decisive geographical advantages over others. Geographical conditions are more uniform than in any other area of the country. Such advantages for trade and industry as now exist can more often be ascribed to the position on the railway transportation system rather than to inherent geographical advantages. This point was recognized fifty years ago by Professor S. J. McLean, subsequently Assistant Chief Commissioner of the Board for many years, in the course of his investigation of railway rate

grievances and regulation:

"To the manipulation of rates by the railway company is to be attributed, in great degree, the tendency to build up the larger community at the expense of the smaller. The movements of population in Ontario for example, from the country to the city is undoubtedly influenced by the competitive rates which favour the larger places. In a country whose wealth is in great degree agricultural, such a fact is too important to be permitted to escape unnoticed. If a proper system of regulation is adopted this tendency can be redressed." *

A good example of the distorting effect on the rate structure of such secondary results of railroad construction is provided by what may be referred to as the Lacombe-Moose Jaw "Gap". The long narrow triangle formed by the Canadian Pacific lines from Moose Jaw to Calgary and Lacombe is not crossed by any other line of this railway, so that the single-line routes between Canadian Pacific stations on opposite sides of the Gap are often widely circuitous. Where distance rates are made on single-line mileage or on combinations of the same, the Gap becomes an important factor in raising the level of rates.

The only lines crossing the Gap are those of the Canadian National between Alix and Calgary and the branches that fan out north and east of Drumheller. Between Drumheller and Moose Jaw there are no through north-south lines on either railway. Circuitous rate-making routes could be avoided if through rates could be made over the short-line Canadian National routes through Drumheller. In connection with the coal rates already discussed we noted that short-line distances rates are already in effect across this Gap from the various coalfields in different parts of the Province. The far-reaching effects of this on the level of coal rates were illustrated in Appendix A. A similar shortening of routes and lowering of rates has resulted in other commodities where the short-line mileages have been used.

Because the territory on the southern side of the Gap, apart from Calgary itself, is almost exclusively Canadian Pacific territory, circuitous routes determine the local rates across the Gap. Interline traffic can move via more direct routes over the interchange points at

* Reports upon Railway Commissions, etc. (1899) p. 36 published as Sessional Paper 20-A (1902).

Stettler or Drumheller, but where full combination rates are charged the resulting rates may be even higher than the rates based on the single-line circuitous route. The result is that many rates between Southern Alberta and Eastern Central Alberta whether local or inter-line, are higher than average for the territory. The effects of this situation on some of the specialized industries in Southern Alberta has already been outlined, but the situation is also potentially disadvantageous to any new industries that may be started. Appendix F shows the reductions in mileage between Canadian Pacific points on opposite sides of the Gap that would be realized by calculating distances over the shortest routes instead of by single-line circuitous routes.

Between Canadian Pacific stations on the south side of the Gap and Canadian National stations on the north side the barrier is in the form of combination rates rather than circuitous routes. Appendix G shows the reductions that would result from using through mileage rates instead of combination rates across this Gap. The examples used are fifth class rates from Lethbridge and brick mileage rates from Red-cliff to certain Canadian National stations.

An example of a satisfactory solution to the problem of inter-line rates is provided by the rates between stations on the Northern Alberta Railways and stations on either of the two trans-continental systems. These are without exception based on through mileage so that paradoxically the situation regarding interline rates is more favorable on the Northern Alberta than it is on either of the parent roads. Northern Alberta points have through rates to all other points in Canada, while local stations on the Canadian National and Canadian Pacific have through rates in all respects only to other points on the same railway. If it is practicable to maintain through rates to and from Northern Alberta points, it would seem discriminatory to pursue a different policy that produces much higher rates between many Canadian Pacific and Canadian National points. The two major railways as joint owners of the Northern Alberta Railways would be in a scarcely different

position if they permitted through rates between points on their respective lines than they now are on through rates with the Northern Alberta Railways. In the lumber and coal interline rates and the rates to and from N.A.R. points, we find already in effect the features which should be common to all class and commodity mileage rates in Western Canada.

D. Interchange Points

The problem of providing through rates via the shortest available route is closely related to the provision of an adequate number of points where traffic may be interchanged, otherwise the advantage of joint rates may be partly offset by the circuitry of the routes that must be used. With the growing economic development of the Prairie Provinces, the establishment of interline rates and the providing of sufficient interchange points has become of increasing importance since the growth of intra-Prairie traffic is one consequence of that development.

The number of interchange points for carload traffic in Alberta is reasonably complete, the only important points served by both railways, but not classified as carload interchange points, being Alix, Vegreville and Lloydminster. The number of common points which are not interchange points is considerably greater in Saskatchewan and Manitoba.

E. Interline Rates in the United States

The principle of basing class and commodity mileage rates on the shortest available routes over which carload traffic can be interchanged has been an accepted feature of the American rate structure for many years. In each of the major class rate investigations, covering each rate territory, and in the country-wide Class Rate Investigation undertaken in 1939, the findings of the Interstate Commerce Commission have invariably included the requirement that mileage rates be calculated over the shortest available routes. This, it might be pointed

out, does not in itself require any railway to short-haul itself but merely specifies the route which shall establish the lowest rate. No traffic need move over this route unless shippers actually specify this routing.

The chief class rate cases where this principle has been laid down are as follows:

Southern Class Rate Investigation, 100 I.C.C. 513 at pp. 628, 656 (1925) - Findings 7 and 14.

Consolidated Southwestern Cases, 123 I.C.C. 203 at p. 384 (1927) - Finding 15.

Western Trunk Line Class Rates Case, 164 I.C.C. 1 at p. 195 (1930) - Finding 3.

Eastern Class Rate Case, 164 I.C.C. 314 at p. 394 (1930) - Finding 4.

Class Rate Investigation 1939. Docket 28300. 266 I.C.C. 447 (1945) - Finding 4 b.

The principle is stated in similar words in all the above cases. The wording of Finding 4 of Eastern Class Rates Case, (164 I.C.C. 314 at p. 394) can be considered typical:

"We find that in computing distances for the application of the distance scales prescribed in this proceeding the shortest routes should be used over which carload traffic can be moved without transfer of lading.

"This finding is not to be interpreted as requiring the actual use of the route over which the rate-making distance is computed."

The problem of whether to allow interline differentials over and above the rates for single line hauls in the making of interline rates was encountered in the Southern Class Rate Investigation, (100 I.C.C. 513) which was completed in 1925. In this case the railroads proposed certain differentials for interline movements on the grounds that the costs of interline movements were greater than for single-line movements. However, in its decision the Commission pointed out several reasons why this contention should be rejected. At page 627 the Commission said;

"Joint-line differentials or arbitraries rest on the theory that a joint-line haul costs more than a single-line haul. But no attempt has been made to measure or even to estimate this extra cost, and the differentials proposed are the product of unguided judgment. Nor is

extra cost in physical handling always incurred. If, for instance, all lines in southern territory were consolidated under a single ownership, it does not follow that the method of operation over what are not joint-line routes would in all cases, or even in most cases, be changed materially. While joint-line hauls ordinarily involve switching operations at the junction point and sometimes the transfer from car to car of less-than-carload freight, similar operations are common in the case of single-line hauls."

The Commission's ultimate finding was:

"That no sufficient reason has been shown for joint-line differentials or arbitraries, but that the absence of such differentials is a factor which should be given some weight in determining the level of the distance scale."

It is submitted that where the general establishment of interline rates is in question no differentials should be assessed on two-line hauls. The absolute level of interline rates should be determined in the same manner as the level of local rates, viz: the general financial need of the railways.

F. Recommendations

It is submitted that interline class and commodity rates in Canada should be established on the basis of through mileage via the shortest distance over which carload traffic can be moved without transfer of lading. To assure the use of the most direct routes in calculating interline rates, interchange points should be established at all strategic points which the two systems have in common. In Alberta this would involve the addition of Alix, Vegreville and Lloydminster to the list of carload interchange points. Other interchange points may also be necessary in other provinces.

The route used in calculating the rate is not necessarily the route over which the traffic must move.

The establishment of a thorough-going system of interline rates will go far to remove many local disabilities in all parts of the country and place non-competitive points at a much less disadvantage relative to competitive points. It will have the effect of providing non-competitive points with alternative routings at lower

rates so that the advantages now possessed mainly by competitive points will also accrue in some degree to non-competitive points.

As long as interterritorial traffic between East and West comprised the greater part of the traffic moving in Prairie territory it might have been possible to maintain that the lack of interline rates involved no serious disadvantages. But with the growth of secondary industries, more specialized agricultural production, and the expanding local markets to absorb production, the situation in Western Canada today is fundamentally different from that when the rate structure was originally developed. Regardless of the stage of economic development reached, however, it is submitted that in its lack of complete system of interline rates the present rate structure is obsolete.

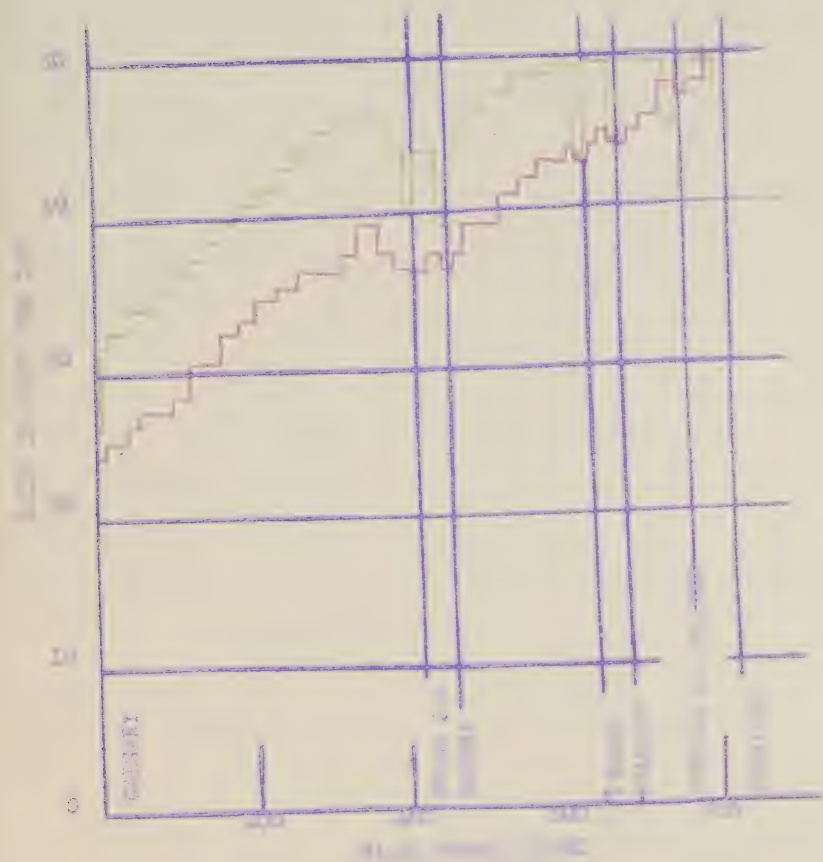


From Wolf Creek, Alberta (C.W.R.) to C.P.R. Mainline
 Points between Calgary and Winnipeg

Combination rate prior to Sept 1, 1940 ..

Joint through rate established Sept 1, 1940 ..

* Rate Prior to Sept 1, 1940, is from Pears, Alberta





Mileage Reductions Obtained Between CertainCanadian Pacific Stations by using theShortest Interline Routes

		<u>Medicine Hat</u>	<u>Lethbridge</u>	<u>Brooks</u>
Lloydminster	Present Mileage	539	490	473
	Short Line Mileage	<u>456</u>	<u>450</u>	<u>433</u>
	Reduction	83	40	40
North Battleford	Present Mileage	595	574	557
	Short Line Mileage	<u>520</u>	<u>534</u>	<u>454</u>
	Reduction	75	40	103
Saskatoon	Present Mileage	471	572	538
	Short Line Mileage	<u>440</u>	<u>526</u>	<u>432</u>
	Reduction	31	46	106

Fifth Class Standard Mileage Rates from
Lethbridge to Selected C.N.R. Destinations

<u>To</u>	<u>Present Combination Rate</u>			<u>Short Line Mileage Rate</u>		
	<u>Route</u>	<u>Mileage</u>	<u>Rate</u>	<u>Route</u>	<u>Mileage</u>	<u>Rate</u>
Wainwright, Alta.	Calgary	405	112	Camrose	402	87
Hanna, Alta.	Drumheller	276	86	Calgary	264	68
Vermillion, Alta.	Camrose	407	113	Camrose	407	87
St. Paul, Alta.	Edmonton	445	119	Edmonton	445	93
Kindersley, Sask.	Calgary	400	112	Calgary	400	87
Delisle, Sask.	Calgary	501	127	Calgary	501	104
Melville, Sask.	Regina	495	126	Regina	495	100

Appendix GPart 2Carload Rates on Brick from Redcliff toSelected C.N.R. Destinations

<u>To</u>	<u>Present Combination Rate</u>			<u>Short Line Mileage Rate</u>		
	<u>Interchange</u>			<u>Interchange</u>		
	<u>Point</u>	<u>Mileage</u>	<u>Rate</u>	<u>Point</u>	<u>Mileage</u>	<u>Rate</u>
Wainwright, Alta.	Stettler	488	26	Drumheller	405	19
Hanna, Alta.	Drumheller	231	20 $\frac{1}{2}$	Drumheller	231	15
Vermilion, Alta.	Drumheller	410	26	Drumheller	410	19
St. Paul, Alta.	Edmonton	489	26 $\frac{1}{2}$	Drumheller	479	21
Kindersley, Sask.	Drumheller	367	25	Drumheller	367	18
Delisle, Sask.	Moose Jaw	415	26	Moose Jaw	415	19
Melville, Sask.	Regina	400	24 $\frac{1}{2}$	Regina	400	18

The present form of the Canadian Freight Classification dates from January 1, 1884, when the ten-class scale of rates was made general in Ontario-Quebec Territory, replacing four-class systems. The same system was adopted for Prairie Territory soon thereafter and for Maritime Territory on December 3, 1889. The present issue of the Classification is the nineteenth since 1884 and came into effect on June 15, 1937.

The freight classification exemplifies a method of rate-making that may be termed "commodity discrimination". Under this principle the actual cost of service is largely, though not entirely, disregarded and the various commodities are assigned to the different classes on a basis of "what the traffic will bear".^{*} The method is necessarily one of approximation to average conditions of carriage for the more important commodities, after which other commodities are fitted into the scheme mainly by analogy. While not necessarily approving in all cases the present distribution of commodities in the classification, the present Submission does not question the general reasonableness of this type of commodity discrimination in rate-making.

Table 1 shows the present relationships between the classes in the Ontario-Quebec, Ontario-Superior and Prairie Territories as percentages of first class rates. Ninth class, originally used for livestock, has been omitted since it has been completely superceded by special commodity mileage rates in all territories.

TABLE 1

Classes as Percentages of First Class

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>10</u>
Ontario-Quebec	100	87½	75	62½	50	48	37½	38x	33 1/3
Ontario-Superior	100	83	66 2/3	50	40	37½	27	27	24
Prairie	100	83	66 2/3	50	45	37½	27	25x	24x

x Percentage varies for these classes.

* See Class Rate Investigation, 1939, 262 I.C.C. 447 at pp. 508-9 for an enumeration of the more important classification principles.

The differences in the class relationships between territories go back to the original differences in method used in constructing the class rates. In Eastern Canada, fifth class was the basic class from which the others were derived, while in Western Canada, fourth class was used as the starting point. First class was established at double these classes. It will be noted that the respective classes in Prairie Territory are lower percentages of first class than those in Eastern Canada. In terms of the rates themselves this difference is more than offset, for all but tenth class, by the higher level of first class rates in Prairie Territory. The Prairie class rate level was originally much higher than the Ontario-Quebec class rate level than it is at the present time. In the steps toward equalization that took place with the differential increases of 1918 - 1920, the lower classes on the Eastern Scale were raised to nearly equal, and in the case of tenth class, to greater than the corresponding classes on the Prairie Scale.

It can hardly be denied that in its present form, the class rate system is capable of considerable refinement and improvement. At the present time the effectiveness of the class rate system in Canada is limited by the inadequate number of classes suitably spaced to meet requirements of more than a small fraction of the traffic. Below fifth class there are, in effect, only three classes available to cover a wide variety of commodities, since eighth and tenth classes are practically the same and ninth is no longer used at all. Eighth class itself is of comparatively limited application since the commodities taking this class, e.g. grain, feed, vegetables, generally move on lower commodity rates.

In this connection it is significant to note certain recent changes in the classification system in the United States prescribed by the Interstate Commerce Commission in Class Rate Investigation, 1939, 262 I.C.C. 447, by which the older system of numbered and lettered classes will be replaced by a straight percentage system whereby all classes will be stated as percentages of first class, which is denominated Class 100. In addition to the existing seven classes in the

official classification the Commission required the railways to publish rates for 16 new percentage classes lower than first class. A comparison of the classification systems of the United States and Canada is given in the Appendix to this Submission, indicating clearly the far greater resources of the new United States system.

The advantage of this system is the greater range and flexibility which it gives to the class rate structure. Newer classes can be created easily when the need arises by the simple means of using a new percentage of first class rates. To an area such as Western Canada, where class rates are still widely in use, this would offer the possibility of making the class rates more adaptable to the different types of traffic.

It would still not be feasible to attempt to compel all traffic to move on class rates. Even under the best constructed system of class rates it is still possible that no more than a small part of the total traffic volume would continue to move on class rates. Rates on raw materials, bulk traffic, and agricultural commodities must be adjusted to meet the peculiar conditions of particular commodities. Rates on these commodities may require different rates of tapering for distance depending on the relationship between value and transportation costs, location of markets, market competition and similar factors. It may therefore be expected that many commodity rates will continue to remain outside the class rate structure. In proposing this change in the form of the class rates we are not maintaining that all rates can be fitted into a single pattern.

The present classification, by the very meagreness of its resources for differential treatment can scarcely be considered adequate for the future. A disadvantage of the present system is the relatively few possibilities for discrimination between commodities. It would scarcely be worth while undertaking a major revision of the items in the classification if all changes had to be limited to those that could be fitted into the present nine-class system. We submit

that an essential step before the next such revision of the Classification is the prescription of a percentage system of classes.

The advantage of such a procedure is that it would make it possible to attack the problem gradually. The present classes could be translated at once into percentage classes and new classes could be added gradually as the study progressed or new circumstances and needs arose. To retain the present system of classes would effectively postpone any further refinement in the class structure. It should not be necessary to point out that the transition to the new system would not have to be taken at one step. The framework would be set up in advance and the details added later, a method that has been followed in the United States where much more complex issues are involved. This would provide the means for a gradual reform of the details of the classification in contrast to the limited possibilities provided by the present structure.

The proposed percentage system would involve a standardization of class relationships in all territories in Canada. It is submitted that the Prairie class relationships should be retained for the existing classes in such a standardization as they now afford a wider selection of classes at the lower levels.

Recommendations:

- (1) The Canadian Freight Classification should be revised to provide classes on the percentage basis using first class as Class 100.
- (2) A greater number of classes, particularly below Class 50, should be published to enable a greater degree of refinement in classification to be obtained in subsequent revisions of the classification. By this means the class rates could be made more responsive to changing conditions and kept in closer alignment with rates that actually move the traffic.
- (3) The relationship between the present classes should follow the Prairie basis rather than the Ontario-Quebec basis.

Comparison of Relationship of Classes in
United States and Canadian Freight Classifications

Percent of Class 100 or First Class	U. S. RATE TERRITORIES				CANADIAN RATE TERRITORIES	
	Eastern	Southern	Western Trunkline	South- Western	Ontario- Quebec	Prairie
100	1 x	1	1 x	1 x	1	1
92.5	x		x			
87.5					2	
85	2 x	2	2 x	2 x		
83						2
77.5	x		x			
75					3	
70	3 x	3	3 x	3 x		
66.6						3
65	x		x	x		
62.5					4	
60	x		x	x		
55	R 26 x	4	4 x	4 x		
50	4 x		x	x	5	4
48					6	
45	x	5	A x	A x		5
42.5				x		
40	x	6	x	x		
38				x	8	
37.5	x		5 x	5 x	7	6
35	5 x	7	x	x		
33.3					10	
32.5	x		B x	B x		
30	x	8	C x	C x		
27.5	6 x		x	x		7

x indicates the percentage column required to be published in class-rate tariffs.

Appendix H
(Continued)

Percent of Class 100 or First Class	<u>U. S. RATE TERRITORIES</u>				<u>CANADIAN RATE TERRITORIES</u>	
	Eastern	Southern	Western Trunkline	South- Western	Ontario- Quebec	Prairie
25	x	9	x	x		8
24						10
22.5	x	10	D x	D x		
20	x	11	x	x		
17.5	x	12	E x	E x		
16	x		x	x		
15				x		
14.5	x		x			
13.5				x		
13	x		x			
12.5				x		
12				x		
8.5				x		

x indicates the percentage column required to be published in class-rate tariffs.

THE CARLOAD MIXING RULE

The rules in the Freight Classification regarding what commodities may be mixed in carload shipments and charged at carload rates are important in that they determine to some extent the amount of volume discrimination which is sanctioned by the rate system. In this respect the mixing rules are in the same class as the distinctions between carload and less-than-carload rates which are also to be found in the Freight Classification. By volume discrimination here will be meant differences in treatment, whether of rates or service, between shipments based solely on the volume of the shipment.

In the Canadian Freight Classification the mixing rules on shipments moving on class rates are contained in Rule 10. Since 1904, a different rule has applied in Western Canada from that in Eastern Canada. In Eastern Canada the mixing rule is unrestricted, that is to say, any combination of commodities may be shipped at the carload rate applicable on the highest rated commodity in the shipment. The minimum weight on shipment of mixed commodities is the highest provided for any of the articles in the carload.

In Western Canada, and on traffic moving between Eastern and Western Canada, mixing is permitted only of commodities classified under "distinctive headings" in the Canadian Freight Classification. A list of these--there are no less than ninety--is given in Appendix I to this Submission. It should be pointed out that these ninety headings do not include by any means all the items listed in the classification, since there are many other items listed separately, and which therefore could not be included in mixed carload with any other commodities. It is not proposed to go into the history of the difference in mixing rules but only to discuss the question of whether the Western rule should be uniform with the Eastern rule. Our position is that the unrestricted mixing rule now in effect in Eastern Canada should be extended to Western Canada.

That the restriction on mixing places the small shipper or consignee at a disadvantage relative to the large shipper or consignee can hardly be denied. It can have either or both of two effects: (1)

increase the freight charges because of the necessarily greater use of less-than-carload rates; or (2) give rise to shipping arrangements designed to avoid payment of full less-than-carload rates.

The first of these effects undoubtedly occurs. If there were no possible way to avoid paying less-than-carload rates the restricted mixing rule would be quite indefensible. However this is offset to some extent by the methods of shipping and distribution of goods that have grown up in Western Canada, methods which have developed partly in relation to the conditions laid down by the restricted mixing rule. Goods from Eastern Canada are shipped from the manufacturer to wholesale houses in Western cities and redistributed by truck or less-than-carload shipments to the surrounding territory. The volume of business handled is such as to permit shipments in carload lots, with the result that the small merchant whose requirements are insufficient to make up carload lots is able to fill these more cheaply through the wholesalers than by ordering direct from Eastern Canada. An alternative method is the use of pool cars operated by freight forwarders by which a number of small shipments are consolidated into carload lots. The restricted mixing rule thus has an influence on the pattern of traffic and distribution, giving a bias in favor of large shipments or the consolidation of small shipments.

The next question that arises is what effects would follow from the abolition of restrictions on mixing in Western Canada, and particularly whether it would result in any radical disturbance to existing conditions. It is improbable that this change would cause any serious disturbance to the existing distributing organizations. While it is true that at the outset the actual form of that organization owed much to the existence of the mixing restriction, it does not follow that it has become completely dependent upon it. If this were true, the mixing restriction would have even less justification than can now be found for it, for then it could be charged with having fostered an entirely artificial method of distribution.

There are several reasons, however, why the effect of the restricted mixing rule should not be overestimated. The wholesale

distributing organization in Western Canada performs many essential functions in the economy of Western Canada. Its position is not a precarious one maintained only with the aid of the restricted mixing rule. The fact that Eastern Canada has been and will continue to be the main source of supply of most manufactured articles means that there will always be the problems of distance and the time of delivery between manufacturer and retailer which will sustain the demand for the usual services performed by wholesalers: variety of stock, credit facilities, quick delivery, and also in acting as manufacturers' agents. As long as these functions remain to be performed it is difficult to believe that with unrestricted mixing rules there would be precipitated any widespread shift in distributing practices. The extension of the unrestricted mixing rule to Western Canada may benefit the wholesale trade in many cases by enabling them to use carload rates more frequently, or to reduce inventories on certain items.

It should not be overlooked that the Western tradesman who wanted to have a carload of mixed merchandise shipped to himself direct still would require in many cases the services of an agent or forwarder to assemble the shipment at the Eastern point of origin. Unless he were located in one of the larger cities, he would be unlikely to obtain direct pool car service for smaller shipments. Nevertheless, the right to use this method of shipment for those in a position to do so should not be denied by discriminatory classification rules. It is reasonable to suppose that it will only be used by those in a position to reduce their transportation charges and other costs thereby. In the last analysis it is the consumer who pays the freight charges and the one who should be entitled to any benefits that can be derived from a more liberal mixing rule. While the present distinction in mixing rules between Eastern and Western Canada may be satisfactory to those directly engaged in the traffic, at the same time it discriminates against the Western consumer. It is not necessary to contend that the standardization of mixing rules will mean a considerable benefit to the consumer to justify the removal of the restricted mixing rule.

The manner in which the restricted mixing rule in Western Canada applies is itself open to objection. By limiting mixing privileges to carloads to goods classified under "distinctive headings" in the Canadian Freight Classification, an unnecessary limitation on carload shipments is introduced. These arbitrary distinctions can be ignored by shippers within Eastern Canada. Within Eastern Canada carload rates are available to all shippers on all possible combinations of commodities for which carload rates are provided in the Canadian Freight Classification. It is not necessary to apply for a special commodity rate. In Western Canada shippers can only avoid these restrictions if the railways have published commodity rates specifically authorizing the mixing forbidden by Rule 10.

Not all the traffic affected by Rule 10 is that which passes through distributors' hands. Even on traffic between Eastern and Western Canada--for which primarily the restricted mixing rule was put into effect--direct merchandise shipments are not confined to those moving from manufacturer to distributor. Shipments which do not concern the distributing trade in any way are liable to be adversely affected by the mixing restriction. Within Western Canada the restricted mixing rule has even less justification, since it was originally made with the inter-territorial traffic in mind. If the issue were divided, as it has not been on previous occasions, into two distinct issues--whether unrestricted mixing should be allowed (a) within Western Canada (b) between Eastern and Western Canada, there is little reason to doubt that the support of the restricted mixing rule would be by far the greater in the latter case.

On class rate traffic between the United States and Western Canada the mixing restriction also applies. Here too it is clearly an obstruction to the free flow of traffic. Mixing rules in the United States are uniform and similar to those in effect in Eastern Canada. A car loaded in the United States according to United States mixing rules, which is charged standard class rates for the distance it moves in Western Canada, may be classed as an l.c.l. shipment under the Western Canadian rule and charges assessed accordingly. Unless the Canadian importer is

Careful to specify how his shipment is to be loaded, and unless it is of a nature to meet the requirements of the Western Canadian mixing rule, he will be charged standard class rates on an l.c.l. basis for the Canadian part of the haul.

In summary, the restricted mixing rule in Western Canada is a handicap to the free flow of traffic under non-discriminatory conditions. Although it was imposed in the first place primarily to protect the Western distributors' position in the trade between Eastern and Western Canada, it also applies on traffic within Western Canada and between Western Canada and the United States. It is not an indispensable condition for the existence of the distributing trade in Western Canada, since that trade owes its present position to economic reasons of a more fundamental nature. The mixing rule in its present form discriminates against small business and the consumer in Western Canada. For these reasons the restricted mixing rule applying in Western Canada should be cancelled, and the unrestricted mixing rule now in effect in Eastern Canada should be applied uniformly in all parts of Canada.

DISTINCTIVE HEADINGS
in
CANADIAN FREIGHT CLASSIFICATION

1. Agricultural implements, hand, and agricultural implement parts, hand.
2. Agricultural implements, other than hand.
3. Agricultural implement parts, other than hand.
4. Airplanes or airplane parts.
5. Aluminum and aluminum articles.
6. Ammunition.
7. Asbestos.
8. Athletic, gymnastic and sporting goods.
9. Bags and Bagging.
10. Barrels, half-barrels, casks, drums or kegs.
11. Baskets.
12. Blackboards.
13. Boats, canoes and launches.
14. Boiler parts, iron or steel.
15. Boots and shoes.
16. Boot and shoe findings.
17. Boxes.
18. Brick.
19. Building metal work.
20. Building woodwork (house trim), not further finished than primed.
21. Building woodwork (house trim), further finished than primed.
22. Burial cases (caskets or coffins), O.R.C.
23. Cereals and cereal products.
24. Chemicals, drugs or medicines.
25. Copper, brass or bronze.
26. Cordage.
27. Cork.
28. Covering, boiler or pipe.
29. Dry goods.
30. Electrical appliances and supplies.

DISTINCTIVE HEADINGS
in
CANADIAN FREIGHT CLASSIFICATION

31. Explosives.
32. Feed, animal or poultry.
33. Fire fighting apparatus.
34. Fruit, fresh.
35. Furniture.
36. Games or toys.
37. Garden or lawn furniture.
38. Gases, compressed.
39. Glass.
40. Glassware.
41. Grading and road making implements.
42. Groceries.
43. Hardware.
44. Harness and saddlery.
45. Hides, pelts, or skins, not dressed nor tanned.
46. Iron or steel.
47. Leather.
48. Liquors.
49. Livestock.
50. Lumber.
51. Machinery and machines.
52. Meats.
53. Metal workers' supplies.
54. Moldings.
55. Molds.
56. Musical instruments.
57. Musical instrument parts.
58. Nursery and florists' stock, other than art decorative evergreens, O.R.D.
59. Oils.
60. Oil well outfits and supplies.

DISTINCTIVE READINGS
in
CANADIAN FREIGHT CLASSIFICATION

61. Ordnance.
62. Ores.
63. Paints and varnishes and paint and varnish materials.
64. Paper.
65. Paper articles.
66. Petroleum or petroleum products, including compounded oils and greases having a petroleum base.
67. Plumbers' goods.
68. Pottery.
69. Pumps and pump parts.
70. Radio receiving sets and radio parts.
71. Railway equipment and supplies.
72. Rubber and rubber goods.
73. Safes and safe or vault parts.
74. Scales and scale parts.
75. Seeds.
76. Sewing machines and sewing machine parts.
77. Shades, shade material, shade fixtures, also curtain poles or rods and fixtures.
78. Sheet metal ware.
79. Sprayers, field, garden or orchard.
80. Stationery.
81. Store or office fittings.
82. Stoves, ranges and heaters, and parts.
83. Tanks.
84. Trunks and bags, travelling.
85. Vegetables.
86. Vehicles, not self-propelling, O.R.B. and C.
87. Vehicle parts, other than self-propelling vehicle parts, O.R.B. and C.
88. Vehicles, self-propelling.
89. Vehicle parts, self-propelling.
90. Woodenware or indurated fibreware, with or without metal fittings.

(Page 13246 follows)

A. I might say, to begin with, that the three subjects which are grouped in this brief are not related in any way. They are just three separate subjects which are considered here together as a matter of convenience. The problem which we are discussing in this submission involves the method of establishing rates on traffic moving from a point on one railroad to a destination on another and to that type of movement we have applied the term "Interline movement" and we are discussing the interline rates on such movements.

We point out, to begin with, that the reason for the difference between single line and interline rates where the same rate bases are used, results from the tapering of the rates for distance. The rates for the lowest mileage block are relatively higher, decreasing rapidly with distance so that where two lines are involved in a single haul, the higher increment mileage blocks figure in the rate twice, producing a difference between the single line rate and the second line haul, and we have illustrated this with a fairly elementary example at the bottom of page 1 in a hypothetical rate scale-- in the first instance a single line haul and the rates that would be paid were two carriers involved at two different combinations of distances for the same haul. It will be noted that the difference between the single and the interline rates, depends, in the first place, on the amount of the initial increment. We have used in our example 10¢ and that happens to be very close to the increased increment on the lowest class rate at the present time, tenth class, which is $9\frac{1}{2}\text{¢}$, and we might get an increment for first class traffic as high as 31¢ speaking of the Prairie standard scale and also of the distributing scale in this case. The other difference between the two rates was the adding of tapering in the subsequent increment and the third is the relative difference in the two hauls making up the combination,

and so it follows that the lowest combination rates result in making the difference between two hauls composing it as great as possible.

We then point out the three general types of rates governing interline hauls. The first involves the straight combination of local rates made after the interchange producing the local rate and that would be listed, I think, in the second or third column of our table on page 1. At the other extreme is the rate calculated on through mileage over the shortest route over which carload traffic can be interchanged and I might say that constitutes our recommendation in this submission, that this method by a recommendation of the Commission that distance rates covering more than one line be calculated on this basis. We are not, in this connection, recommending any changes in the statute to bring this about because of the fact that the problem has a great many complications which it would be, from our experience, already very difficult to place into language in one statute without unduly hampering the work of the Board in bringing about the application of such a principle. The three methods refer to no compromise between these two extremes. Such methods are in use in Canada now in many cases and classes of commodities. Lumber and coal in Western Canada are formed on the basis not of the straight combination rates nor of the single line rates, but on increases over the latter or decreases from the former rate. I will then read the remainder of this section starting at the last paragraph on page 2.

The development of interline rates can be described as a gradual progress from the first method above--straight combination of local rates--to the second method by which interline rates are treated the same as single line rates in areas served by numerous separate railroads. The first

method is often productive of confusion in the rate structure. Greater uniformity in such cases becomes a necessity to remove the innumerable cases of local discrimination that arise. Instead of creating favorable conditions for the movement of traffic, combination rates set up a series of barriers which are purely artificial in nature, being the result of the extraneous series of events that have established the separate railroad corporations within their present territories.

In the United States substantial progress has been made toward making interline rates on the same basis as single-line rates, both territorially and interterritorially. At the present time, interline rates made on any other basis are definitely exceptions to the general rule. They are still found, for example, in the arbitraries above normal rates which are allowed certain short lines or weak roads. On the other hand, no uniform method of making interline rates has ever been adopted in Canada. In certain instances, concessions have been made by the railroads, in others the Board has prescribed some measure of relief. No general policy of reducing interline rates to single-line rates has ever been laid down, however, and the Board has not drawn any broader conclusions from its decisions in specific cases in favor of reduced interline rates.

In the following section we review mainly for historical and descriptive reasons the disposal of this problem with regard to the class rates in Canada. We note that in 1916 there was an attempt to cancel first class interline rates which already existed within Eastern Canada and the Board in this case intervened and compelled their retention. Later, in 1919 the general traffic officer of the Board worked out a method by which interline rates in this territory were to be compiled. These involved certain fixed

amounts to be added to the single-line rates.

THE CHAIRMAN: Pardon me a moment. May I ask you this? In this case where it says "The Board intervened and compelled their retention", when the Board intervened was it on its own motion?

A. No, I think the material fact there was a particular railroad - I think it was the Canadian Northern -- I think they intervened or protested. There may have been individuals as well sir.

As I was saying, the plan for the establishment of interline rates in Eastern Canada was later abandoned by the Board, and at the present time, as we point out, such interline rates as now exist in the town tariffs in Eastern Canada are in general confined to two parts of the two systems which originally were local roads.

Q. Where is it you point that out?

A. That follows, sir, from the bottom of page 4 and over to the end of Section A on page 5. Some of these roads were at one time operated as separate lines and at interline rates with both the larger carriers.

COMMISSIONER INNIS: That is to say even though they were controlled by the larger carriers?

A. I think even in the period of control, although I cannot say as a certainty whether the interline rates grew up in the period of independence or subsequently. It may be doubtful whether some of these were ever regional.

At 1 p.m. the Commission adjourned
to resume at 2.45 p.m. this day.

(Page 13252 follows)

AFTERNOON SESSION

Friday, December 9, 1949.

H. J. DARLING, recalled.

EXAMINATION BY MR. FRAWLEY, cont'd.

THE CHAIRMAN: Very well, Mr. Frawley.

MR. FRAWLEY: Mr. Darling, when we adjourned for lunch I think we were somewhere around or about page 4 of the brief.

A. I think I had finished Section A on page 3 and we were just starting in with Part B.

Q. Yes, "Class Rates in Western Canada and Between Eastern and Western Canada", in the light of the subject of interline rates. What have you to say about that?

A. This is put in to explain the fact that there are now interline rates in class traffic between Eastern and Western Canada between all stations. That situation is not subject to the complaints of some of the other situations which we are raising here. That is put in merely to give as much as possible the general picture of the interline situation.

Turning now to Part III on page 6, we turn to commodity rates starting with Eastern Canada. It is pointed out here that prior to 1922 certain commodities already received interline rates at rates less than a combination of local hauls. But the Board took up the matter in this memorandum on interline rates, which is published in Volume 12, J.O.R. & R., at page 372, and in that judgment a list of the various commodities which then were receiving interline rates, and those on which no such rates applied is given in regard to that particular point.

They noted at that time that deductions from the combination rates were made only for agricultural limestone,

cordwood and slabs, fertilizers, grain and grain products, lumber and sugar beets. And the procedure of the Board in that case was to suggest to the railroads that this principle might be extended to joint hauls on a great many other commodities; and as a result of that suggestion the present method applying on commodity mileage rates, commodity mileage combination rates, I should say, was put in by the carriers, whereby wherever commodity mileage rates are published in the tariffs, both railways have provision that in combination, a deduction of 1 cent, or a smaller amount of 1/2 cent is granted, so that there is a maximum of 2 cents per hundred weight, which would be continued as a result of these provisions.

This is still in effect in Western as well as in Eastern Canada. In Western Canada the situation is varied as a result of important commodities such as coal, lumber, and fertilizers, especially from Warfield, British Columbia, particularly, and live stock to Vancouver; interline rates the same as or only slightly higher than single line rates are in effect.

The interline coal rates were prescribed by the Board as a result of the judgment of the Board in the Western Rates Case. I shall leave them until we come to the following section.

But in the case of coal, whereas it was a judgment of the Board, lumber rates appear to have been reduced to a single line basis or approximating a single line basis as a step taken by the railroads themselves.

The list of course, of commodities which did not have interline rates of the type we are considering is large; and in the case of one, cement, this deduction of the 1 cent for the mileage scale is not applicable, since there is no mileage scale in the tariffs as such.

In the following sections the issue is the same in most cases. We are just showing the actual effect of interline rates on the rate structure in Western Canada. In the first place we deal with coal where, as I said before, the Board held in the western rates case:

" . . . that reduced interline rates were desirable in the case of coal and prescribed that on any two-line movement the through rate should not exceed 20 cents per ton over and above the rate for a corresponding distance on a single line movement."

We listed the effect of this in one instance in our Appendix A to this submission, which is to be found at page 19. In some cases the map is none too clear, but in this map we listed the lines of railway, we illustrated them and those marked with cross-hatching, where the rates were reduced as a result of applying single line mileage in calculating the rates, the points of origin being in the lower left corner; in the Drumheller area, that is served by both railroads, and the effect has been to calculate the rates to the red lines which are Canadian Pacific, using the Canadian National lines directly north from Drumheller, and thereby greatly reducing the mileage used in calculating the rates.

Q. Dealing with the rates on coal originating at Drumheller, you say Drumheller is a competitive point?

A. Yes.

Q. Both Canadian National and Canadian Pacific can haul coal out of Drumheller, and if the coal is given to the Canadian Pacific at Drumheller, I suppose that is done if it is not destined to a Canadian National point?

A. In that case, if it was a competitive point, of course, the Canadian National would originate the shipment, presumably; but speaking of a Canadian Pacific

point, then the provision of interline rates and mileage would have to be calculated either around Calgary or Moose Jaw to get into the northern parts of Saskatchewan.

THE CHAIRMAN: Do I understand that at competitive railway points original shipments would be made by the Canadian National?

MR. FRAWLEY: If the destination is Canadian National; that is what the witness said.

MR. FRAWLEY: Q. That is what you would ordinarily expect?

A. That is what I had in mind.

THE CHAIRMAN: Q. You would expect to go on through from the beginning to the end on the Canadian National?

A. Yes, that is right.

Q. There is no interline question there at all?

A. Except that if the rate were calculated over the shortest mileage -- the rate might be calculated over a shorter mileage, and the rate be reduced on that account, if the Canadian National route were circuitous.

Q. You might have the same through rate as the Canadian Pacific?

A. Yes. That would apply now if they were both competitive points.

MR. FRAWLEY: When you come to cement, cement is a case where there is no interline rate arrangement. Is that so?

A. Yes.

Q. I thought before we left coal, you might just indicate by way of illustration how the existence of interline rates operates as to coal, so that the distinction will be clear when you come to deal with cement, if that suggestion appeals to you. Would you illustrate

the manner in which the use of interline rates operates in connection with the shipment of coal out of Drumheller?

A. As I mentioned before, the provisions in the Western Rates Case were to make combination rates no higher than, I think, 20 cents a ton over the single line movement for the same distance, and that, of course, removes the heavy increment which is found in the combination rate; so that a point, in the case of coal, located in Northern Saskatchewan on the Canadian Pacific, while it might be hauled for the entire distance by the Canadian Pacific, would have its rate determined by the shortest route, which would be the Canadian National.

Q. I see. Now, passing to lumber.

A. I would touch very briefly on lumber. In 1940 the interline rates of lumber were put in. There had been, I believe, some prior to that -- I am not just too sure of that on that one point; but they were put in at slightly higher rates than for comparable single line hauls. These were put in by the railways. And in our Appendix B we have three, one map and two charts, showing the effect on the rates to interline points. It resulted from the introduction of through interline rates based on through mileage.

The first map, which is on page 20, shows the effect of the reduction due to interline rates not exclusively in this case, as there was some revision in the single line scale to, let us say, point Athabasca in Northern Alberta. I show in green the Canadian National, while the points on the Canadian Pacific are shown in red, and the difference is there. The extent of the reductions can be illustrated by comparing them to Canadian National points and then to Canadian Pacific points, I presume. But Canadian National points reduction is largely because

of changes in the single line scale.

Q. Lumber moving out of Athabaska, an exclusive Canadian National point, to Lethbridge, an exclusive Canadian Pacific point--what would be the effect of the arrangements there?

A. The combined effect was a reduction of 8 cents in the rate; and at pages 21 and 22 we show the effect of shipping points in the first place from points in Western Alberta on the Canadian Pacific to various points on the Canadian National line between Winnipeg and Edmonton, the lower line showing rates as a result of using the interline rates adopted in 1940, while the reverse is shown from Canadian National points in Northern Alberta to points along the Canadian Pacific line from Calgary to Winnipeg, which also shows a reduction in rates.

Q. Will you now turn to page 22?

A. That would be on page 22.

Q. Yes.

A. The next commodity which we use to illustrate interline rates or lack of such is cement, from Exshaw, Alberta, which is 57 miles west of Calgary on the Canadian Pacific main line.

Q. And it has no Canadian National connection?

A. That is right. I believe at Exshaw and Winnipeg at the present time are the only points where cement is produced in the Prairie Provinces. At one time there was a plant on the Canadian National in Northwestern Alberta, but it has since closed down.

Turning now to Appendix C on page 23, we have attempted to put in the rates on cement from Exshaw to various points in the Province of Alberta, the red line

being Canadian Pacific railway on which the shipment originated, and the green line being the Canadian National. If we compare lines in the same vicinity or running parallel with one another, it will be noted that the difference in rate produced is as much as 10 cents.

THE CHAIRMAN: How do the colours go?

A. Red is Canadian Pacific, on which Exshaw is located. Green is Canadian National. And I should mention the blue at the top of the page, which is the Northern Alberta Railway, which is treated as part of either railway, depending on the case. They have through rates on both the other lines affected, and the interline rate is shown in comparing points in close proximity to each other, and in the northeastern part of the province, east of Edmonton, the difference amounts to as much as 10 cents per hundred weight.

MR. FRAWLEY: Q. Could you give me an example of that situation?

A. It might be a little difficult to do so without the names.

Q. Oh yes, the names are not there.

A. I think if we look at two lines running east of Edmonton, the Canadian Pacific and the Canadian National to Lloydminster, to which the rate is 36 cents, the rate immediately west of that on the Canadian Pacific is respectively 34, 33 and 31; and on the Canadian National line, 43 and 41.

Q. That means that the rate from Exshaw to a point on the Canadian Pacific line just running into Lloydminster is 34 cents; and just below that you have a station which would seem to be roughly equi-distant from Exshaw, but it is on the Canadian National line, and the rate is 43?

A. That is right.

Q. That is the kind of thing you are seeking to illustrate, which is being caused by the absence of interline arrangements as they exist with regard to lumber and coal?

A. That is right.

THE CHAIRMAN: Q. What happens to the traffic in each case?

A. In this case, how do you mean?

Q. How does the coal travel?

A. Or the cement?

Q. Yes.

A. There are rates published from Exshaw to all points in Alberta, and, I think, Saskatchewan, too. They are published by special arrangement with both railways, and certain interchanging points are provided for in the tariff. The rates, however, are made on the basis of the combination of rates from Exshaw to Calgary, and from Calgary to destination, I believe in most cases, so that to Lloydminster the interchanging point might well be at Edmonton. I do not know for sure. It would have to be stated in the tariff of the Canadian Pacific who haul it to Edmonton, possibly, and then to Canadian National points; whereas at Lloydminster within Alberta the Canadian National will haul it from there to destination. But as to the disposition of the rate between the two railways, that is something I am not informed about.

MR. FRAWLEY: Q. What do you mean when you say: "As to the disposition of the rate between the two railways?" What is that called? Is it called the make-up?

A. The division.

THE CHAIRMAN: Q. What is that?

A. The division of the joint revenue between the two carriers. That is not a problem which affects the rates as such, but it has been treated as a carrier problem.

MR. FRAWLEY: Q. Looking at the map again, if a carload of cement leaves Exshaw and goes to Vermilion on the Canadian National?

A. You might say, "Jasper", that is perhaps a point easier to locate.

Q. All right. Take Jasper, Alberta, on the Canadian National. Would that be turned over to the Canadian National at the first junction with that railway after it left Exshaw, or at the last junction to the Canadian Pacific?

A. I am unable to say, in this particular case, because the tariff would provide the actual inter-changing point which, I think, is Edmonton. But if there was no joint through tariff, it would obviously be interchanged at a point which would produce a lower rate, and that would be, I think, Calgary, because it is a very short haul from Exshaw to Calgary.

Q. I take it this is necessary for the information of the Commission. The distance to Jasper would be, let us say, 300 miles, perhaps a little more actually, by rail; and if the rate was, let us say, \$1, would you find the rate to be more or less if it were leaving Exshaw on the Canadian National, not the Canadian Pacific, and going to a point 300 miles or a little more from Exshaw, let us say, a point perhaps on the Northern Alberta Railway, would you find the rate less or more than the rate to Jasper?

A. It would be less because of the single --

because of the single line combination rate.

Q. The movement from Exshaw to a point on the Northern Alberta Railway is considered as being wholly a Canadian Pacific haul?

A. Yes, for rate-making purposes.

Q. Although it is interchanged with the Northern Alberta Railway at Edmonton?

A. There are single line rates between the Canadian Pacific and the Northern Alberta railways.

Q. And after leaving Exshaw, which was the same distance to Jasper on the Canadian National as it would be on the Canadian Pacific to Edmonton, it changed with the Canadian National at Edmonton, and then on to Jasper via the Canadian National?

A. It would be interchanged at some point along the line, but I do not know necessarily where. It would be a specified point.

Q. But the rate is more when the car is going Canadian National around, than Canadian Pacific around, even though the mileage travelled might be exactly the same?

A. Due to the difference between the combination and single line rates.

Q. But there is no interchange arrangement or combination of the two locals to operate?

A. Yes. In the last part of this section on page 10 I read two or three paragraphs which conclude with:

"There are two interests affected here -- that of the consumer located on the line of the terminating carrier and that of the industry itself."

There are coal mines located on the lines of both

railways as well as lumber shipping points.

"On low valued commodities the effect of combination rates can be extremely burdensome. In many areas served exclusively by the Canadian National in Alberta there is often no alternative to the payment of combination rates on cement.

The second interest involved is that of the industry and the community dependent on it. For example, building materials from the Medicine Hat area must compete with products manufactured at points served by both railways which have the advantages of single line rates throughout Western Canada. This is a disadvantage which is not geographical but which lies solely in the rate structure."

Q. Medicine Hat is an exclusively Canadian Pacific point?

A. That is right. The situation in regard to brick which is produced in large quantity in the Medicine Hat and Redcliff area is taken up in the next section, and we might now turn to Appendix D at pages 24 and 25. Part 1 on page 24 attempts to show the difference in the market territories as determined solely by freight rates. There are, of course, other factors which are not, but with them we are not concerned. But if the difference in freight rates were the sole determining factor, not the combination of the market between Redcliff in Alberta and Winnipeg, where brick is also produced -- Canadian National stations are shown with green lines; the division is shown by light blue lines; it starts south of Moose Jaw and winds up over into Northeastern Alberta, that is to say, to Canadian National stations east of that line, the rate from

Winnipeg on brick is lower than the rate from Redcliff, although a good deal of that area is much closer to Redcliff than Winnipeg.

Q. It is the broken lines?

A. The broken blue or purple line, I guess that is.

MR. EVANS: Q. Which broken blue line?

A. It is the comparable line I am speaking of now; it crosses the Alberta-Saskatchewan border. It starts in Southwestern Saskatchewan and runs up across the border, about midway up, and it is broken crossing the Canadian Pacific line, because it only applies to Canadian National stations.

Q. I find difficulty. I am sorry. I find there is a broken line running across the bottom of the page.

A. Oh, that is the 49th parallel. It is only broken where it crosses the Canadian Pacific line.

Q. Is that the line I see in the lower left, beginning on the boundary and going northwesterly to Calgary?

A. That is the provincial boundary. That was a little misleading. There is a similar type of line not in purple but in blue, which shows the present dividing line as between Canadian Pacific stations and, as both Redcliff and Winnipeg are served by the Canadian Pacific, this line approximately divides the area between them in equal parts. This is a broken line running close to the line I just mentioned, and it is the division of the areas where the Canadian National rates made on a single line basis, or where the rates to the Canadian National points made on a single line basis, which would approximate the present division produced by rates to the Canadian Pacific points.

In part 2 of the appendix we made a compilation of the carload shipment.

MR. FRAWLEY: Q. Going back now to page 11 and dealing with Appendix D, part 1, there is a sentence which reads:

"Owing to the lack of through mileage rates from Redcliff to Canadian National stations, the Winnipeg territory, i.e., the area to which rates from Winnipeg are lower on Canadian National lines, covers most of Saskatchewan and extends into Alberta. If the rates were based on through mileage the dividing line between the two territories would lie in Central Saskatchewan, passing through points approximately equi-distant from Redcliff and Winnipeg."

At the conclusion of your examination of the freight rate structure in that area, do you think that area is more circumscribed than the area for the Winnipeg products?

A. In this particular case, with respect to products moving out of Redcliff and going to Canadian National stations, there is a more circumscribed market than for products moving out of Canadian National stations and going to Redcliff as far as freight rates are concerned.

MR. SINCLAIR: Q. I am instructed there are plants manufacturing brick on lines of the Canadian National in Saskatchewan. That would make the map somewhat different. This is not straight theory.

A. Possibly on page 25 you will see the number of carload shipments from Redcliff, to stations in the Prairie Provinces; and the method used here was to place in the number of cars in the opposite coloured ink to the railway concerned. That is to say, from Redcliff to Canadian Pacific or competitive points, we

have entered the car in blue ink, so that you will note there were 52 cars shipped in 1947. To Canadian National stations exclusively we have put the number of cars in in red ink opposite the station, and it may be noted that in Northern Alberta and Northern Saskatchewan there is in effect quite a number of Canadian National stations to which brick moved from Redcliff in this particular year. The total movement was 1,190 cars, which includes a few cars to British Columbia and Ontario of which 187 were destined to local Canadian National stations. That may answer the question as to the volume of traffic moving on these rates.

Q. I am still not clear. Does that mean there were, into Manitoba, 23, 11, 43 and 4, that there were that many cars which came all the way from Redcliff to Winnipeg?

A. That is right. From Redcliff to Winnipeg there were 23 cars, as shown, and to Brandon, 7 cars; and in Saskatchewan to Regina, 52; Moose Jaw, 16; Swift Current, 10; Saskatoon, 56, and so forth.

(Page 13272 follows)

Q. Yes.

A. This will indicate in this case an idea of the volume of traffic in this particular commodity moving from the Medicine Hat area, and which would pay combination rates.

Commenting very briefly on Part 5, which concerns rates on seed from Coronation, Alberta, it is illustrated in our map of page 26, which is in Appendix E.

We have shown a station Coronation here, and have entered in the actual rates paid on certain shipments from the period March 24 - April 15, 1949. The "M" in the case of some shipments indicates that the minimum rate was paid. Those are all less than car-load shipments. It is possible then to compare the difference in the rates to Canadian Pacific stations, which are shown in blue ink, and those to exclusively Canadian National points, which are shown in red. Another factor in the situation of interline rates is the situation in non-competitive areas.

MR. O'DONNELL: Did you say the Canadian National is in red?

A. The Canadian National lines are in green, but the Canadian National rates are in red.

MR. EVANS: Q. Does that mean that the rates are too low, that it is in the red?

A. No, I am afraid that inference cannot be drawn in this case.

In Part C we are concerned with a situation in non-competitive areas in Canada, and we illustrate this by an example provided by the lines of the Canadian Pacific railway between Calgary and Moose Jaw and extending north to

Lacombe. On page 24 there is a map showing the lines. Between Calgary and Moose Jaw and Lacombe which is just north of Red Deer, there is an area that is not crossed by any line of the C.P.R., so that from points south of the area, which are in the main exclusively C.P.R. points, to points north of the area, the rates must be calculated on a circuitous mileage. We have one or two examples of the difference in mileage shown in Appendix F which is on page 27.

From Lloydminster to Medicine Hat, for example, the present mileage is 539 miles. If the rate were to be calculated on the short-line distance it would be 456 miles.

MR. FRAWLEY: Q. You say that the present mileage is 539 miles; that is, going a certain distance on the C.P.R. and a certain distance on the C.N.R.?

A. No, these are both between C.P.R. points.

Q. A shipment originating on C.P.R. in Lloydminster and moving to Medicine Hat would travel 539 miles, keeping to C.P.R. lines throughout?

A. Yes.

Q. But if the movement originated on the C.P.R. at Lloydminster but was turned over to the C.N.R. so as to make the shortest miles, it would be 456?

A. Well, the rate-making route was made by the shortest available route.

COMMISSIONER INNIS: Would the rates be the same?

A. You mean, under the present circumstances?

COMMISSIONER INNIS: Well, as a result of competition between the three points ?

A. No, they would not, because Medicine Hat is exclusively a C.P.R. point, and any movement of traffic

partly by C.N.R. would pay combination rates.

MR. FRAWLEY: Very well?

A. In Appendix G we are still dealing with the same area, routes across this territory north from Calgary and Moose Jaw, and are noting rates from Lethbridge, which is exclusively a C.P.R. point, to certain. exclusively C.N.R. points north of this area. It is showing a slightly different point from the previous one in that we are comparing the present mileage and the rate that would apply using the short-line mileage, and the rate calculated on that mileage, as it is not a C.N.R. station, it does not involve any change in the route that is followed in either case. The traffic is able to move directly north through Drumheller and other points, but there is a considerable difference in the rate due to the short line mileage.

From Lethbridge to, for example, Wainwright, at the present time, if the shortest rate or the lowest rate is obtained by exchanging / ^{the} traffic at Calgary, it produces a rate of \$1.12 on standard fifth class mileage rate, and using the short-line mileage by passing through Camrose, a rate of 87¢ is derived.

Q. And that difference between \$1.12 and 87¢ is due to the fact that there is no exchange of traffic to get to the destination via the shortest possible mileage using the both railways?

A. There could be exchange of traffic but only by using a combination rate.

On page 14, in the last paragraph, we draw a comparison between that situation and that which applies on the Norther Alberta Railways.

I will read the final paragraph on that page:

"An example of a satisfactory solution to the

problem of inter-line rates is provided by the rates between stations on the Northern Alberta Railways and stations on either of the ^{two} trans-continental systems. These are without exception based on through mileage so that paradoxically the situation regarding interline rates is more favorable on the Northern Alberta than it is on either of the parent roads."

That is, with regard to non-competitive stations on the respective lines.

"Northern Alberta points have through rates to all other points in Canada, while local stations on the Canadian National and Canadian Pacific have through rates in all respects only to other points on the same railway. If it is practicable to maintain through rates to and from Northern Alberta points, it would seem discriminatory to pursue a different policy that produces much higher rates between many Canadian Pacific and Canadian National points. The two major railways as joint owners of the Northern Alberta Railways would be in a scarcely different position if they permitted through rates between points on their respective lines than they now are on through rates with the Northern Alberta Railways. In the lumber and coal interline rates and the rates to and from N.A.R. points, we find already in effect the features which should be common to all class and commodity mileage rates in Western Canada."

We talk very briefly about the question of Inter-change Points, and point out that in Alberta, at any rate, there are very few logical points of interchange that are not now designated as interchange points, although there

are a number of common points in Saskatchewan and Manitoba, or a greater number of such points in Saskatchewan and Manitoba.

Q. I suppose that the initiating carrier feels that he should be entitled to take it as far as his line railway will permit him to take it?

A. This has generally been accepted, but not without qualification.

Q. Well, take Canmore which is a C.P.R. point, the nearest C.N.R. point would be Calgary, but the C.P.R. would not wish to surrender all of its traffic destined to the C.N.R. point at Calgary, I take it?

A. Not in the normal course of events, no.

Q. If it was going up on the St. Paul de Metis line of the C.N.R., the C.P.R. would like to carry it as far as they could on their own line?

A. Yes, I would expect so.

Q. Does that situation obtain throughout Canada in all cases where the originating carrier hauls the traffic as far as he can on his own line before turning it over to the other carrier to be carried to destination on the line of the other carrier?

A. No, I would say there are frequent exceptions to that, particularly between eastern and Western Canada. One may ship from eastern Canada to western Canada or vice versa and interchange at Fort William without any extra charge, as I understand it, although there may be an interswitching charge, but no change in the line-haul rate.

Q. If a shipment originated at an exclusively Canadian National point, say, Amherst, Nova Scotia, and was destined to an exclusively Canadian Pacific point, say, Cochrane Alberta, would it be carried by the Canadian National to

Calgary and then turned over to the Canadian Pacific to be hauled the remaining twenty or twenty-five miles to Cochrane?

A. Well, that would depend on what routes were available for that. It would have to be limited to the routes that are published in the Routing Guide.

Q. Is that part of the tariff that prescribes the rates for that haul?

A. No, it gives the available routes. It might be possible to ship it via the Canadian National to Ste. Rosalie Junction, which is south-east of Montreal, and turn it over there to the Canadian Pacific to ship it the balance of the distance.

Q. Supposing the shipper had given no particular route instructions, and simply a direction to take the car to Cochrane, Alberta, and he delivers it to the Canadian National at Amherst?

A. Well, that is rather a technical problem. I do not know just what would occur in that case, I believe that if the shipper wished to use that route, that he would have to specify it, otherwise the originating railway could feel that it could carry it on its own line as far as possible.

Q. And without any specific instructions to the contrary, and observing a rule that the originating carrier is entitled to the farthest haul on his own line, then they would take it as far as -

A. Well, they would be short-hauled at Ste. Rosalie.

Q. Well, the first place they touch is probably at St. John?

A. Well, I do not know whether that is an inter-

change point.

Q. All right?

A. And Section #E -

MR. SINCLAIR: We should clear that up. That is one of the matters we had before the Commission, and since the Maritime Freight Rates Act, it was not opened, and so the interchange point was Ste. Rosalie rather than St. John.

MR. O'DONNELL: Well, it could be taken a lot farther west than Ste. Rosalie.

MR. FRAWLEY: Well, I understand that there is such a thing as as the initiating carrier being entitled to the maximum haul. The maximum haul from Amherst to Alberta is -

MR. SINCLAIR: There is no route available. The first interchange point that can be made out of Amherst on the Canadian Pacific is Ste. Rosalie.

THE CHAIRMAN: Is that in the Province of Quebec?

MR. SINCLAIR: Yes. Of course, as it points out, it could be interchanged at any other number of interchange points further west, right up to Calgary, but even if a shipper wished to route it, the first place he could route C.N.-C.P. would be C.N. Amherst to Ste. Rosalie, and C.P. Ste. Rosalie to destination, since the former interchange point at St. John, since the passing of the Maritime Freight Rates Act, is no longer available.

MR. FRAWLEY: I do not know that we should spend too much time on it.

Would you mind informing the Commission, that if a shipper wanted the car to be hauled by the Canadian National for some reason, as far as they could haul it, could he bring that about by a simple direction in the

shipping directions?

MR. SINCLAIR: Yes.

THE CHAIRMAN: What would be **in the best** interests of such a shipper from Amherst today as things are now?

MR. FRAWLEY: As things are now, what would be in his best interests?

THE CHAIRMAN: If he could direct where the transfer was to be made, and so on, what ought he to do to save himself money? What can he do?

A: Well, the rate in this case would be the same. It is just a case of how much business would be given to either railway.

Q: So as far as the shipper is concerned, it is indifferent to him is it?

A: Depending on the service or on other considerations than the rate.

Q: As far as the rate is concerned?

A: Yes, in this particular case.

THE CHAIRMAN: What are you seeking to have remedied here, Mr. Frawley?

MR. FRAWLEY: I am only seeking to have remedied the interline situation in Western Canada. I thought it might help the Commission if we knew what this business of interchanging is, what is involved in it. I mean, frankly, it is just a little confusing, as to how much is left for the railways to bargain about, and how much is prescribed by the Board, say, or how much is left to the shipper to direct. It seems to be somewhat confusing, but, in any event, our position is relatively simple, sir. We call attention to the fact that as to some commodities produced in Alberta, originating in Alberta, there are interline arrangements. As to some

others, there are no interline arrangements, and we call the attention of the Commission to this anomaly in the freight rate structure.

THE CHAIRMAN: When you say "interline arrangement", do you mean arrangement affecting the rates paid?

MR. FRAWLEY: Yes, perhaps that is my own expression.

MR. SINCLAIR: I think, Mr. Chairman, that just to clear this matter up it might be useful at this stage to say that the Board on application could order, if the situation warranted, an interchange point to be established, and an interline rate, indeed, to be put in, and some of the cases we put on the record during the hearings at Regina by Mr. Evans, when one of the Saskatchewan briefs was being presented to the Commission.

(Page 13284 follows)

MR DARLING: Q. Now, Mr. Darling, will you continue with the brief?

A. Turning to part E, dealing with interline rates in the United States, I will read parts of this section. I am now at the bottom of page 15, sir:

The principle of basing class and commodity mileage rates on the shortest available routes over which car-load traffic can be interchanged has been an accepted feature of the American rate structure for many years. In each of the major class rate investigations, covering each rate territory, and in the country-wide Class Rate Investigation undertaken in 1939, the findings of the Interstate Commerce Commission have invariably included the requirement that mileage rates be calculated over the shortest available routes. This, it might be pointed out, does not in itself require any railway to short-haul itself but merely specifies the route which shall establish the lowest rate.

There is a provision in the Interstate Commerce Act which is for the purpose of protecting the originating carrier in this respect.

THE CHAIRMAN: Q. You say:

" . . . the findings of the Interstate Commerce Commission have invariably included the requirement that mileage rates be calculated over the shortest available routes."

A. Yes, sir.

Q. That is, there may be two or three routes available?

A. Yes, sir; and the shortest one---

Q. That governs.

"This, it might be pointed out, does not in itself require any railway to short-haul itself"

A. That means, sir, that they would be obliged to turn over the traffic at a closer point to the origin than

they could possibly carry it. That is to say, if they were carrying the traffic, the Canadian Pacific were carrying something from Winnipeg to Jasper, just as an example, they would be according to this principle short-hauled unless they could carry it as far as they could, which is Edmonton. If they had to turn it over---

Q. This requirement that the mileage rates be calculated over the shortest available routes is subject to the other condition, that the railway however can carry it as long as it likes on its own line; is that it?

A. Well, there are two different things. One is the rate-making route, which is not necessarily the route over which the traffic must be carried. That is made clear at the middle of the page, sir, where we give an example of one of these findings. I might just note there--

Q. Then you go on to say that no traffic need move over this route unless shippers actually specify this route.

A. That is to say that if a railway has a complete line between the two points it is entitled to handle the entire shipment, but all traffic does not have to move over the route which decides what the rate shall be.

Q. I see; the rate may be decided by---

A. Other factors than the actual movement of the traffic. I think that would be one way of putting it.

COMMISSIONER ANGUS: Q. Does the division of the rate between the two railways depend on the route by which the traffic actually moves?

A. I am not able to say authoritatively. I think it does, sir, subject to other things such as a certain proportion going to the originating carrier.

THE CHAIRMAN: Q. Such as what?

A. A certain portion of the rate I believe goes to

the originating carrier in all cases, but I cannot speak authoritatively on that.

Q. I thought the divisions between the two carriers were unknown?

A. That is right, sir.

Q. You are only supposing that; is that it?

A. That is so. I believe that is what is done.

MR FRAWLEY: Q. Nobody knows what the division is between the two carriers in these cases?

A. No; that is not a matter that we are discussing here.

Q. But the importance of it to the shipper or the receiver of the freight is that when you have a prescription such as you say the Interstate Commerce Commission has, that mileage rates be calculated over the shortest available route, then the shipper gets that advantage in the rate that he pays, regardless of what happens physically to the car; that is the point?

A. Yes.

Q. In other words, a shipment moving from Winnipeg to Jasper, and handed to the Canadian Pacific at Winnipeg for movement to Jasper, the Canadian Pacific is not required to turn that over actually to the Canadian National at say Saskatoon or the nearest place where the two lines meet, or say Portage La Prairie, for instance?

A. No; I do not like to take exception to our example. There would have to be a rate open. We had better take a point which is an exclusively Canadian Pacific point in Manitoba to Jasper.

Q. Well, say Carman?

A. Carman to Jasper; they would, I think, under the present---

Q. Carberry, I meant to say. Is Carberry joint?

MR SINCLAIR: Take Boissevain.

MR FRAWLEY: Q. Take Boissevain.

A. What was your question?

Q. From Boissevain to Jasper, from the exclusive Canadian Pacific point in Manitoba to Jasper, an exclusive Canadian National?

A. Well, I believe the shipper can specify, in a case like that, whichever route he wanted, provided he was willing to pay the rate calculated over that route.

THE CHAIRMAN: Q. Which might be a higher rate, do you mean, than the lowest?

A. Yes, if he particularly wanted the car---

THE CHAIRMAN: Coming back from the United States to Jasper; I think we had better not do that.

MR FRAWLEY: Q. Make that quite clear, now. If the United States rule applied---

THE CHAIRMAN: Q. If I understand the rule you are talking about, in the United States it specifies the route which shall establish the rate?

A. Yes, sir; in general that has been adopted.

Q. Now, the shipment only pays that rate, but the traffic itself need not necessarily move on that route unless the shipper wants it to?

A. No. I think the number of routes that are available to move that is something which is left largely to the carriers to decide.

Q. Unless the shipper specifies?

A. Yes; but if he names a route which is not mentioned, he must pay the rate, local rate, applying over that route. He must confine himself to the authorized routes.

Q. To get the lowest rate?

A. Yes.

MR FRAWLEY: Q. The importance of it is that you say what you call the I.C.C. requirement does not apply to those commodities in western Canada where inter-line rates have not been established?

A. Yes, that is---

THE CHAIRMAN: That means we have no such rule in Canada, then?

MR FRAWLEY: Q. Put it that way, no such rule in Canada?

A. As I pointed out, sir, in certain commodities the rates are approximately made on that basis. I mentioned the case of fertilizer from Warfield, British Columbia, to prairie points.

Q. Yes, but the Chairman asked, did we have a rule of the Transport Board similar---

THE CHAIRMAN: Q. The rates may happen to turn out that way in many cases, or, as you say, to approximately that, but have we any rule which says it must be done, as they have in the United States?

A. No general rule, sir, no.

MR FRAWLEY: Q. Very well?

A. At page 16 we come---

THE CHAIRMAN: Q. Do you say there ought to be such a rule?

A. That is our recommendation, yes, sir.

MR FRAWLEY: Yes, sir. We come to our recommendations on the very next page, sir.

THE WITNESS: We list five of the principal general rate investigations that the Interstate Commerce Commission has undertaken in recent years, and in each case this finding has appeared, and we give the wording of it in finding 4 of Eastern Class Rates. The others are very closely similar .

"We find that in computing distances for the application of the distance scales prescribed in this proceeding the shortest routes should be used over which carload traffic can be moved without transfer of lading."

Then this further point, sir, which was raised:

"This finding is not to be interpreted as requiring the actual use of the route over which the rate-making distance is computed."

MR FRAWLEY: Very well, then.

THE WITNESS: The problem of whether to allow interline differentials over and above the rates for single line hauls in the making of interline rates was encountered in the Southern Class Rate Investigation, (100 I.C.C. 513) which was completed in 1925. In this case the railroads proposed certain differentials for interline movements on the grounds that the costs of interline movements were greater than for single-line movements. However, in its decision the Commission pointed out several reasons why this contention should be rejected. At page 627 the Commission said:

"Joint-line differentials or arbitraries rest on the theory that a joint-line haul costs more than a single-line haul. But no attempt has been made to measure or even to estimate this extra cost, and the differentials proposed are the product of unguided judgment. Nor is extra cost in physical handling always incurred. If, for instance, all lines in southern territory were consolidated under a single ownership, it does not follow that the method of operation over what are not joint-line routes would in all cases, or even in most cases, be changed materially. While joint-line hauls ordinarily involve

switching operations at the junction point and sometimes the transfer from car to car of less-than-carload freight, similar operations are common in the case of single-line hauls."

The Commission's ultimate finding was:

"That no sufficient reason has been shown for joint line differentials or arbitraries, but that the absence of such differentials is a factor which should be given some weight in determining the level of the distance scale."

It is submitted that where the general establishment of interline rates is in question no differentials should be assessed on two-line hauls. The absolute level of interline rates should be determined in the same manner as the level of local rates, viz: the general financial need of the railways.

In that case any reduction in rates as a result of applying such principle would be recovered from the general adjustment at the conclusion of the other removal or making of other changes in the rate structure.

Q. Now, Mr. Darling, I would like to take you just for a few minutes to two or three passages in the Canadian Pacific brief and ask for your comment before you go on with your recommendations. At page 84 in Part II of the Canadian Pacific brief the following passage occurs:

"In general, interline rates have been established wherever there is necessity for them, and where a reasonable amount of traffic, moving with some degree of regularity, is involved. Such rates are usually related to the single-line rates, with appropriate addition to cover the extra costs inherent in the handling of interline traffic. Canadian Pacific has been, and always is, willing to establish joint inter-

line rates where necessary. "

Have you anything to say about that?

A. Just that there is a difference between joint-line rates and the interline rates which we are discussing in this brief. A joint-line rate is theoretically any rate which two or more carriers give formal assent to associate themselves in the tariff -- I do not know just how to put that -- and it may be no more than the full combination of the local rates, but it nevertheless would be described as a joint through rate. In other words, that term has no reference in particular to what the actual level of the rate is.

Q. On page 87 there is a short passage:

"As a general rule, interline movements of any real volume are today subject to joint through rates, and the railways are always prepared to give consideration to the establishment of additional interline rates as the necessity for them arises."

What have you to say about that?

A. Well, as I said before, joint through rates does not necessarily mean that the rates are established on the basis which we have set forth here. In the case of cement from Exshaw there are joint through rates to all the Canadian National points, but their level is in effect the combination rates between those points.

Q. You say that, although they may be what the Canadian Pacific call joint through rates, you do find that a shipment moving out of Exshaw to the Lloydminster area, . will cost ten cents more to deliver it to a Canadian National point in that area than to a Canadian Pacific point?

A. Yes, that would be the case.

Q. Even though it moves to the Canadian National

point on what the Canadian Pacific brief calls a joint through rate?

A. Yes. The joint through rate does not refer to the way in which that rate is established or arrived at.

Q. And what you have done is, you have gone in behind the joint through rate and determined the way in which it has been made up?

A. Yes.

Q. And that is what you have been discussing in your brief?

A. That is right.

Q. I see. Now, on page 89 there is one more passage:

"The suggestion for the establishment of joint through rates on the basis of the shortest route over which freight can be handled without transfer of lading, . . ."

That is what you are asking, is it not?

A. Yes.

Q. Now, they say this about that:

" . . . accompanied as it is by other submissions for the establishment of interchange points at all points of intersection, can in essence only be an attempt to break down existing single line rates. This is so because, if the traffic were to move through the new junction points rather than by the single-line haul, many cases would exist where the originating carrier would only get a short haul to the junction points."

What have you to say about that?

A. Well, we do not presume to say how the traffic should be interchanged on the basis of the---

THE CHAIRMAN: What page is that?

MR FRAWLEY: Page 89 of the C.P.R. brief, sir,

Part II.

THE WITNESS: We do not presume to say how the traffic should be interchanged between the two carriers in rates such as we are advocating here, and it may well be worked out to protect the local haul to the greatest extent possible, giving consideration to the rights of both parties in the case, that is, both carriers.

MR FRAWLEY: Now you come to your recommendations, Mr. Darling, with respect to these interline rates; would you just read that into the record ?

A. It is submitted that interline class and commodity rates in Canada should be established on the basis of through mileage via the shortest distance over which carload traffic can be moved without transfer of lading. To assure the use of the most direct routes in calculating interline rates, interchange points should be established at all strategic points which the two systems have in common. In Alberta this would involve the addition of Alix, Vegreville and Lloydminster to the list of carload interchange points. Other interchange points may also be necessary in other provinces.

The route used in calculating the rate is not necessarily the route over which the traffic must move.

The establishment of a thorough-going system of interline rates will go far to remove many local disabilities in all parts of the country and place non-competitive points at a much less disadvantage relative to competitive points. It will have the effect of providing non-competitive points with alternative routings at lower rates so that the advantages now possessed mainly by competitive points will also accrue in some degree to non-competitive points.

As long as interterritorial traffic between East and West comprised the greater part of the traffic moving

in Prairie territory it might have been possible to maintain that the lack of interline rates involved no serious disadvantages. But with the growth of secondary industries, more specialized agricultural production, and the expanding local markets to absorb production, the situation in Western Canada today is fundamentally different from that when the rate structure was originally developed. Regardless of the stage of economic development reached, however, it is submitted that in its lack of complete system of interline rates the present rate structure is obsolete.

Q. Now will you turn to page 30, to the next section of your brief, which deals with a different matter, namely, the freight classification. Will you just briefly say what the point in this submission is?

A. This is not to be classed, I suppose, as a grievance, but as merely a recommendation regarding the change in the form of the class rates. At the present time the relationship of classes is as shown in Table 1 at the bottom of page 30, using first class as 100%. The rates are not all exclusively related percentagewise to the first class rate, but we have used the approximations in some cases where there are now irregularities. It is our submission that, in line with the other changes which we have proposed in the equalization and interline sections of our submissions, the recasting of the class rate structure should come through the stating of class rates as percentages of first class, thus providing a larger number of classes available, which would enable more traffic to move on class rates.

I might point out that there was at least partial agreement on this point with the submission of the Canadian Pacific Railway, which has proposed that the

classes in the various territories be reduced to a common basis, and at page 71, Part II, of its submission it has recommended the following percentages, which I might just insert below Table 1 for comparison.

The Canadian Pacific's proposals called for first class 100, of course, second class to be 85% of first class, third class to be 70%, fourth class to be 55%, fifth class to be 45%, sixth class to be 40%, both seventh and eighth classes to be 35%, ninth class, which we have not shown, is also to be 40%, and tenth class 30%.

We have given in the appendix to this particular submission, which is at page 34, a comparison of the class rate systems in four United States territories and in two Canadian territories. Whether by coincidence or design, the proposed relationship of classes of the Canadian Pacific happens to coincide for those in the present southern classification in the United States, which is on the second column of that exhibit or that appendix, with this exception, that the southern classification in the United States has four additional classes below 30%.

In the Appendix H to which I am referring it will be noted that the revised classification for the United States is to call first class 100 and other classes in percentage of it, and we have put there both the old classes with their former names, and there is an X shown beside the new classes which are to be provided. This results in a very much more extensive class system. For example, the eastern classification, which now has 23 classes, 100% or lower, of which 15 are below 50%; in the southern there are now 12 classes, of which 8 are below 50% of first class, ignoring classes over 100%.

The classification as proposed in the Canadian Pacific submission would provide 8 classes, of which 4 would be below 50%.

Our submission is simply that the number of classes should be increased according to need by this percentage system.

THE CHAIRMAN: Q. By what?

A. By using this percentage relationship, denominating classes as percentages of first class. If in the course of equalizing the commodity mileage rates these are to be stated as percentages of first class rates, a point also proposed by the Canadian Pacific, this would be a logical step to follow.

(Page 13300 follows)

THE CHAIRMAN: What part of the Canadian Pacific brief are you referring to?

MR. FRAWLEY: The Canadian Pacific deals with this, sir, over a period, at page 71.

THE CHAIRMAN: What volume?

MR. FRAWLEY : Part 2. You will find particularly they deal with it on page 71. Have you anything more you want to call the Commission's attention to?

A. I think I might just read the recommendations which are found at the bottom of page 33.

- (1) The Canadian Freight Classification should be revised to provide classes on the percentage basis using first class as Class 100.
- (2) A greater number of classes, particularly below Class 50, should be published to enable a greater degree of refinement in classification to be obtained in subsequent revisions of the classification. By this means the class rates could be made more responsive to changing conditions and kept in closer alignment with rates that actually move the traffic.
- (3) The relationship between the present classes should follow the Prairie basis rather than the Ontario-Quebec basis.

Q. Now then, you have one more section of this brief which I think we can deal with rather briefly, the Carload Mixing Rule, of which the Commission has heard quite a lot.

A. I think I will not repeat the background or argument here which has already been made before this Commission in these proceedings. I might merely point out that the references for, I believe, the most recent time it was before the Board, was in Volume 15 of the

Board's Orders at page 177 in the Court of Revision of the Canadian Freight Classification. This decision was made on June 15th, 1925.

MR. SINCLAIR: What page are you referring to?

A. I am starting on page 36.

Q. Where are you reading from?

A. I am just reading my notes as to the reference as to the last case.

THE CHAIRMAN: Is that page referred to in the typing here?

A. No, I was just giving a record, sir.

MR. FRAWLEY: I thought you might be good enough to make a note of that case?

A. Re Proposed Canadian Freight Classification No.17, 15 J.O.R. & R. page 177.

MR. O'DONNELL: Your lordship will remember we read extensively from that case in Winnipeg.

THE WITNESS: I would just say we are associating ourselves with the dissenting judgment of Commissioner Oliver which is found at page 240 regarding the mixing rule and in which it said:

"It would appear to me that the question properly at issue is not the wishes or interests of either the Western retailers or Western wholesalers but of the consuming public of the West"

I might just list here the various statements that have been made to this Commission with regard to the mixing rule both pro and con. Those who spoke in favour of the removal of the distinction and the establishment of mixing privileges the same in Western Canada as now in Eastern Canada included Calgary and Edmonton Boards of Trade at page 1457 and 58 of the

transcript, the evidence of Mr. Bolan of the Alberta Co-Operative Union 1498 and 99, and Mr. McFall who spoke for the Alberta Federation of Agriculture at page 1591, Mr. Johnston for the Alberta Dairymen's Association at page 1617 and again at 1622, Mr. Wilton for the Manitoba Federation of Agriculture at page 191, Mr. Noonan of the Pioneer Electric of Winnipeg, I believe, at page 560 to 563, Mr. Parr of the Ray-6-Vac Company of Canada at page 670 and the Canadian Retail Federation at pages 6081 to 90 and the Manitoba Government, Chapter IX pages 14 and 15 of their submission (I have not the transcript reference for that).

In opposition to the change was the evidence of Mr. Lewis of Louis Petrie & Company of Calgary at page 1493 and Mr. Madison of MacDonald Consolidated at 2108, Mr. Fillmore of the Winnipeg Board of Trade at pages 562 to 566, explaining the position of the Winnipeg Board of Trade as not taking any position on this issue owing to, I believe it was said, differences of opinion of the members.

I do not propose to read any more of this particular submission than the final paragraph on page 40 which summarizes our views on this subject.

In summary, the restricted mixing rule in Western Canada is a handicap to the free flow of traffic under non-discriminatory conditions. Although it was imposed in the first place primarily to protect the Western distributors' position in the trade between Eastern and Western Canada, it also applies on traffic within Western Canada and between Western Canada and the United States. It is not an indispensable condition for the existence of the distributing trade in Western Canada, since that trade owes its present position to economic

reasons of a more fundamental nature. The mixing rule in its present form discriminates against small business and the consumer in Western Canada. For these reasons the restricted mixing rule applying in Western Canada should be cancelled, and the unrestricted mixing rule now in effect in Eastern Canada should be applied uniformly in all parts of Canada.

I might draw attention to our Appendix I, pages 41 to 43 where we list the distinctive headings so-called which now appear under the Canadian Freight Classification.

MR. FRAWLEY: Thank you, Mr. Darling. Now Mr. Sinclair wishes to cross-examine.

- - - - -

CROSS-EXAMINATION BY MR. SINCLAIR

Q. Mr. Darling, just keeping close to the matter you have been dealing with in regard to the mixing rule, you understand, do you not, or on behalf of Alberta, that the position of the railways, both the Canadian National and Canadian Pacific, in regard to this carload mixing rule is that it is a matter of controversy and that all they wish is to carry out the desires of the patrons of the railways and they feel that the matter is one which should be brought before the Board if there is any desire to change the existing rule?

THE CHAIRMAN: You are saying before the Board?

MR. SINCLAIR: Yes, before the Board, and the railways have no feeling about the matter one way or another as to whether there should be a uniform mixing rule or otherwise?

A. Yes, I am aware of that.

Q. Now, that is all I intended to ask you on the carload mixing rule and we might possibly work this

brief from the back to the front?

MR. FRAWLEY: It is good both ways.

MR. SINCLAIR: I have a very few questions on the classification section of your brief. Now as I understand it, you are suggesting a revision of the classification through the establishment of additional classes being percentages of first class?

THE CHAIRMAN: What page?

MR. SINCLAIR: Page 33, I think is really where he says that.

A. Yes, that is right.

Q. And your purpose of that is, you feel, to make a more simplified rate structure. Is that correct?

A. I think it would make a more effective class rate structure.

Q. What do you say as to the simplicity of the freight rate structure?

A. I think it would simplify the structure.

Q. Now, you remember the brief of the Province of Alberta regarding industrial location?

A. Yes.

Q. And the matter of input-output ratio and the maintenance of what was termed the "critical relationship"?

A. Yes, I remember that.

Q. Now, I presume that you have, if that became effective in the way it was presented, a different class rate depending on the end use of the commodity that was being shipped. Would that be correct?

A. I do not think that would follow. We do not mean this to replace the commodity rate structure.

Q. Then you would suggest, would you, that in dealing with livestock there should be a commodity rate on beef and a commodity rate on lamb and mutton?

A. I have suggested no such thing.

Q. Well, hogs, lambs, sheep, all dress out differently than do steers. Isn't that correct?

A. I don't know what that has to do with the class rates.

Q. Well, it would necessitate a separate percentage of first class to maintain that critical relationship or it would necessitate an individual commodity rate in each of the instances where the dressing out weight was different in regard to livestock. That is correct, is it not?

A. I don't think that is necessary.

THE CHAIRMAN: I want to make sure that I understand something here. You say at the bottom of page 31 and on page 32 that: "In addition to the existing seven classes in the official classification the Commission required the railways to publish rates for 16 new percentage classes lower than first class". What I want to make sure of is you talk about the existing 7?

A. Those refer to the classification in the United States, sir.

Q. I know it does but when you say "The existing seven classes in the official classification, the Commission required the railways to publish rates for 16 new percentage classes lower than first class" -

A. Yes sir.

Q. What has become there of the existing seven classes? Are they all being made percentage classes?

A. Yes, that is illustrated, sir, on page 34.

Q. In any case then, it means, does it not, that the seven and the sixteen make twenty-three - there are twenty-three classes now and they are all percentage classes except the first?

A. That is right.

MR. SINCLAIR: Well, under the Canadian Classification, as it is today, Mr. Darling, fifth class in the East is 50% of first class. That is correct, is it not?

A. Yes, that is the case.

Q. And in the West fourth class is 50% of first class?

A. Yes.

Q. And the relationships above and below are related, therefore, to that classification. Would that be correct?

A. I believe those two cases are the key classes.

Q. Then, under the Canadian Pacific rough outline of the plan that they are going to present to the Board of ~~the~~ Transport Commissioners in the General Freight Rates Investigation regarding equalization of rates, they have taken that difference between East and West and averaged it to come out to make fifth class 45% of first class?

A. Yes, that is right.

Q. Now, what I want to understand is would you want to add these additional classes below tenth class to simplify the rate structure? That is the purpose you are putting this scheme forward for?

A. I did not just say to simplify; I said to make the class rates more effective in themselves.

Q. More effective in the sense that there would be smaller percentage relationships between them?

A. Simply that they would be such that possibly more traffic might move on them.

Q. Or that there might not be as many commodity rates. Is that right?

A. Well, the commodity rates in many cases might

well be related to the class rates.

THE CHAIRMAN: Have you told us here how many classes we would then have in Canada?

A. We did not presume to say just how many should be authorized, sir. I imagine that there is no necessity to decide that at one point. The Board might in any particular hearing prescribe a new class but it could just take any figure there that it thought reasonable.

Q. Would it certainly be more than ten?

A. Yes, I would think so, sir.

Q. To begin with?

A. Yes sir.

MR. SINCLAIR: Now Mr. Darling, Alberta does not suggest that there is any lack of deficiency in the Railway Act regarding the provision dealing with the freight classification, does it?

A. We are not making any recommendations about that.

Q. You think that Section 322 of the Railway Act is adequate in regard to freight classification matters and you are not proposing any change?

A. We are not proposing any changes as far as freight classification legislation is concerned.

Q. And you would agree with me that it is a very technical problem and requires a very great deal of study before you alter the classification?

A. We are only concerned with the principle of the matter.

Q. But even to decide who might have objections to that principle is quite a complicated matter also, is it not, because your answer to me was that the commodity rates would be in relationship with the class rates?

A. I do not want you to take from that that all

commodity rates would necessarily be that. I said they could be. It may be very convenient so to state them.

Q. Anyhow the people who were moving traffic on them would be very vitally concerned?

A. It would be a matter for hearing at the time these changes were proposed, yes.

Q. Now, in the matter of interline rates, you made a number of references, Mr. Darling, to the situation in the United States. Now, you would agree with me, would you not, that there is a great deal of multiple line routing in the United States?

A. That would be true, yes.

Q. Let us take, for example, between Chicago and New York. I understand there are four routes single line and at least twenty-five multiple line routes between those two cities?

A. Yes.

Q. And therefore, with all these multiple line routes the problem of interline rates becomes one of very great necessity. That is correct, is it not?

A. Yes, it gives rise to greater confusion in the rate structure.

Q. And the Interstate Commerce Commission in their judgments have made reference to the numerous problems that arise if they did not have single line rates where there are multiple line routes of a large number?

A. I presume they have, yes.

(Page 13312 follows)

A. I presume they have, yes.

Q. Now, in Canada there is not the same problem to anywhere near as great a degree?

A. It is a different sort of problem there.

Q. I am talking about multiple line rates.

A. No. There are not as many single lines of railway in Canada.

Q. That is right. But there are more single line routes in Canada than there are in the United States?

A. Proportionately, I suppose, that would follow, yes.

Q. There are a few major centres in Canada which have not got single line routes between them?

A. There are many considerable important centres which are single line points.

Q. A few major centres in Canada have not got single line routes between them?

A. Possibly not, but not a great deal, no.

Q. Now, I got lost in looking at the maps, but you made a reference to the Fort William situation and much of the traffic moving between Eastern and Western Canada on single line routes was given.

A. I think you will find that on page 5.

Q. Yes, thank you. Now, in referring to the situation of traffic between Eastern and Western Canada and the fact that there is an interchange of single line rates at Fort William, you would agree, I presume, that that is based on historical considerations?

A. You mean that is the only reason why we have it?

Q. Oh, you do not agree with it then, is that your answer?

A. I do not know what the origin of it was.

Q. I suggest to you what you really have at Fort

William is a combination of local factors?

A. On the through rates.

Q. Yes.

A. That is possible, as we show it in our class rate analysis.

Q. So actually what happened was that all rates break at Fort William and there is that local rate to Fort William, and the base is arbitrary beyond, is that correct?

A. That is the way the rates are made up now.

Q. Yes. So that actually the situation at Fort William which arose historically when the Grand Trunk and the Canadian National did not extend beyond the head of the lakes is not an example of interline single line rates?

A. No, not if you take exception to the way those rates are made up now. It is true that it is possible to ship from one point on the Canadian National in Western Canada to a Canadian Pacific point in Eastern Canada at the same basis as between Canadian National points, two Canadian National points.

Q. By paying the little combination of locals on the interchange, of course, that is correct.

A. My understanding is that on the class rates, the route is available at Fort William. Is there not an interchange available?

Q. I am talking about through traffic east and west in Canada. That is what you are talking about here.

A. Yes, shipping from a Canadian Pacific point in Eastern Canada to a Canadian National point in Western Canada, you would pay the same rate as if you were shipping between two Canadian National points, one in Eastern and one in Western Canada.

Q. Yes?

A. Therefore it is not really an interchange problem. But the construction of the rate is different.

Q. It does not illustrate the proposition you are putting forth. It arises out of the way the rates are made?

A. It is to the extent that the single line on the interchange hauls are treated in the same way.

Q. You won't agree with me that the rate is really a local rate to Fort William plus a basing arbitrary beyond?

A. Yes, that is what the rate is, even if you have a single line haul.

Q. Because all rates break at Fort William?

A. Yes.

Q. Now, on this map, at page 25 of your brief, that is the map which shows the shipments of brick from Redcliff, Alberta, and Medicine Hat, Alberta, to Western Canada. Now, I noted as you pointed out that there were 23 cars in 1947 to Winnipeg, 7 cars to Brandon, and I think 5 to Neepawa, no, 11 cars to Neepawa?

A. I believe that is right, yes.

Q. And I see four cars Boissevain in the south.

A. There are 4 there. That is obvious, Boissevain

Q. Boissevain is 50 miles south of Brandon, and if your scale is right, I presume that would be approximately correct.

MR. FRAWLEY: You would know what that would be.

MR. SINCLAIR: Yes.

Q. If there is nothing wrong in the rate structure on brick, can you tell me how you can ship from as far

away as Redcliff, Alberta, to the extent of 23 cars in competition with brick factories which are located right at Winnipeg?

A. I asked that very question of one of the operators in the Medicine Hat area, and his explanation was that the demand in the last few years and in 1947 was greater than the supply.

Q. And so this map shows a deficiency of supply in brick throughout the Prairie Provinces, is that right?

A. It may not be an absolute deficiency. It may be that it was more readily available at that time from Redcliff than from Winnipeg, but I am not in a position to say.

Q. Do you know anything about the brick plant at Estevan, Saskatchewan?

A. Yes. I know there is one there.

Q. Do you know anything about its operations over the last two or three years?

A. No.

Q. And the problems of marketing its product?

A. I have heard they have had some difficulty.

Q. Well, if there is a deficiency of supply, can you tell me why Estevan, which is closer to Winnipeg by some considerable miles than Redcliff, did not meet that demand?

A. I should not be quoting hearsay, but my information was that some of their difficulty was in the nature of the product.

Q. So that may be the real factor is that there is a superior type of brick manufactured at Redcliff and Medicine Hat and that is why it moves to the extent it does throughout the Prairie Provinces?

A. I do not know how it stands up against the Winnipeg product.

Q. I would ask you to turn now to page 9, where you are dealing with "Cement from Exshaw, Alberta". Now you say there are two interests affected here, that of the consumer.

A. Page 10?

Q. Yes, page 10.

MR. FRAWLEY: You said page 9.

MR. SINCLAIR: I am sorry. I mean page 10 of the brief, where I read:

"There are two interests affected here -- that of the consumer located on the line of the terminating carrier and that of the industry itself."

Has the industry which manufactures cement at Exshaw, Alberta, complained about the situation and the tariff in regard to the movement of cement?

A. My understanding is that they have not.

Q. That they have not; have the consumers?

MR. FRAWLEY: Just a minute, Mr. Sinclair.

I was not going to bring this matter in, but now I am going to tell the Commission about it. I took it up with the Canada Cement Company.

THE CHAIRMAN: This is a company in Exshaw.

MR. FRAWLEY: This is the Canada Cement Company which manufactures cement at Exshaw. And my friend wants to know if the Canada Cement Company supports this brief or otherwise. I am quite willing to put on the record what its attitude is. They tell me under the date of August 29, 1949, and I make no apologies. I endeavoured to interest their support of this brief, because I took it they were as much interested in the

Canadian National receivers of cement as in the Canadian Pacific receivers, and on the 29th of August, 1949, they had this to say:

"Insofar as the general public in Alberta are concerned, our prices are based on a flat mill basis and some years ago in order to put all of our customers on an even basis we scaled the territory out very carefully and made a flat mill basis from our Mill East, West, North, and South. This necessitated a very few increases and a great number of decreases, and in making up this basis it meant a reduction in our net revenue, but we felt that it was much better and fairer for the whole Province to have everyone on an even mill basis although it cost us money to do so."

I was talking to him about freight rates, not about his own domestic plant.

"The whole matter seems to be entirely out of our sphere. We accept the rates as set by the railways and we feel that any application of ours to the Royal Commission would not be received with favour by either the railways or the Royal Commission."

That is what the Vice-President and Director of Sales had to say. Now, I have nothing further to say about it, but I would like to put on the record a letter which I received from the President of the Western Retail Lumbermen's Association, dated October 25, 1949, which reads:

"Western Retail Lumbermen's Association, in executive Directors' quarterly session have been informed that the Province of Alberta, in the course of its several submissions to the Royal

Commission on Transportation, will present a Brief on Interline Rates. That Brief, the Association understands, will call attention to the disparity which now exists in the freight rates on cement moving from Exshaw, Alberta, to Canadian Pacific destinations on the one hand and Canadian National destinations on the other hand. The Western Retail Lumbermen's Association, being extensive retailers of cement, operating both on Canadian National and Canadian Pacific lines, support the submission being made by the Province of Alberta, that interline class and commodity rates should be established on the basis of through mileage via the shortest distance over which carload traffic can be moved without transfer of lading."

THE CHAIRMAN: Do they say they are retailers of cement?

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: Retailers and wholesalers of cement. Where do they get their cement?

MR. FRAWLEY: At Exshaw and at Winnipeg, because they operate all over Western Canada. But as far as their Alberta destinations are concerned, they get it at Exshaw.

THE CHAIRMAN: Where is this Canada Cement Company situated, is it at Exshaw, and where else is it?

MR. FRAWLEY: It is all over Canada, and it is in Western Canada.

THE CHAIRMAN: Where is its closest place of manufacture?

MR. FRAWLEY: To Exshaw, Winnipeg, say, in Western Canada, in the Prairies, they are at one extreme

end at Winnipeg, and at Exshaw; Winnipeg being a competitive point, and Exshaw being on the Canadian Pacific.

MR. SINCLAIR: I am indebted to my friend Mr. Frawley for bringing this matter to my attention, but I wonder if he asked them whether they had ever made a complaint to the Board of Transport Commissioners under sections 336 or 337 of the Railway Act. But as they are not here I cannot ask them. However, my submission is that if the lumbermen or the Cement company had any complaint to make, the Board has complete and unfettered jurisdiction to deal with this matter by legislation, and it is complaints that are dealing with the matter without specific facts being brought forward. It is difficult for me to explain that for all^{the} time this legislation has been here they haven't been before the Board and requested that the merits of the matter be thoroughly gone into. I presume that my friend would be glad to follow up this correspondence and assist me by asking them if they have ever been in court.

THE CHAIRMAN: They do not ask about any complaint.

MR. SINCLAIR: They said that they supported the brief. The Lumbermen's Association said that they supported the brief.

THE CHAIRMAN: I thought you were talking about the Exshaw people, the Canada Cement Company, and that they support the brief.

MR. SINCLAIR: Yes, they are wholesalers of cement.

THE CHAIRMAN: Yes, and retailers.

MR. SINCLAIR: As I understand it.

THE CHAIRMAN: You are saying now that this Lumbermen's Association has never gone to the Board.

MR. SINCLAIR: Or if they have, I do not know of it, on this problem. And if they have gone and have been refused, it has been after a full determination of the merits. And if I understand Mr. Frawley's brief, he is not proposing any change in the legislation. He is merely bringing our attention to the disparity, or to the situation of the matter and the manner in which it is dealt with. I have no further questions.

MR. COVERT: There are no questions.

MR. FRAWLEY: Mr. Chairman, I have one more brief which I can put in, I think, rather quickly.

THE CHAIRMAN: All right. What is the name of it?

MR. FRAWLEY: It is called "Highway Transport in Alberta." And I call Mr. Harries.

HU HARRIES, recalled.

EXAMINED BY MR. FRAWLEY:

---(Here follows the brief submitted by the Province of Alberta entitled "Highway Transport in Alberta".)

(Page 13322 follows)

HIGHWAY TRANSPORT IN ALBERTA.

Errata.

- p. 1, line 21 - "2,167" should read "1,154".
- p. 1, line 22 - delete "out of a total road mileage of 63,000".
- p. 1, line 23 - "521" should read "531".
- p. 1, line 24 - "5,748" should read "4,540".
- p. 2, line 16 - "50,597" should read "53,097".
- p. 2, line 17 - delete "tractors".
- p. 11, line 3 - "economics" should read "economies".
- p. 11, line 3 - "of criterion" should read "of our criterion".
- p. 11, footnote (1) "commodity" should read "community".
- p. 15, line 3 - "has not indicated" should read "has indicated".
- p. 16, line 25 - "concerns" should read "concern".
- p. 18, Schedule 1. The total for 1948-49 should read 168165 not 335938.
- p. 19, Schedule 2. Insert after the title "Thousands of Dollars".
- p. 21, Appendix B. In the heading and in the title "1948" should read "1947"; "1949" should read "1948"; "1950" should read "1949" and the right hand column should have a heading which reads "1949 as at Aug. 31, 1949".

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APPENDICES.

HIGHWAY TRANSPORT IN ALBERTA

The purpose of this Brief is to present a short history of the development of highway traffic in Alberta; to analyze the nature and the extent of highway transport in Alberta; and to review the general problem of the regulation and control of highway transport as well as to outline the manner in which such control is exercised in Alberta.

PART I - The Development of Highway Traffic in Alberta

The geographic and economic nature of Alberta early posed a transportation problem. Although most of the terrain did not offer serious impediment to travel and communication, the vast distances that characterized it resulted in a very large total cost for commercial movement. The coming of the railroad was the first factor to have an impact upon that cost; the coming of highway transport was second. The early twenties is usually taken as the starting date of this second development.

The first commercial highway in Alberta was constructed in 1924 when 53 miles of dirt road were gravelled. Although at that date over 60,000 miles of dirt roads were reported in the statistics, it may be safely concluded that most of these were little better than trails between two bridges. By 1934 there were 2,167 miles of gravelled road in Alberta out of a total road mileage of 63,000. During the next decade 521 miles of highway were surfaced with bituminum or concrete and 5,748 miles were gravelled. By 1944 there were over 80,000 miles of road in Alberta.

Corresponding to the development of highways in Alberta the number of motor vehicles within the Province has shown a significant growth. In 1924 there were 48,000 passenger autos and 2,000 motor trucks in Alberta. By 1934 these had increased to 73,000 and 15,000 respectively. At the end of the next decade passenger automobile numbers had increased to 91,500; trucks had doubled their numbers

to 34,000 and there were 193 motor buses licensed.

The relative position that Alberta occupies in the national picture has been steadily changing. In 1938 Alberta had 7 per cent of Canada's population and 3 per cent of the surfaced roads in Canada. In 1946 Alberta's percentage of the national population had decreased to 6.5 per cent and the percentage of surfaced roads had increased to 7 per cent. During the same period the number of motor vehicles registered in Alberta as a percentage of the total number in Canada rose from 7.6 per cent to 8.5 per cent.

PART II - The Nature and Extent of Highway Transport in Alberta

It is extremely difficult to get anything like a complete picture of the extent of highway transport in Alberta because there are so few sources from which statistics may be gathered. It is possible however to get a general indication of some of the commercial operations which take place.

In the license year 1948⁽¹⁾ there were 50,597 trucks, trailers, tractors or semi-trailers licensed. A breakdown of this figure shows that there were 8,661 Public Service Vehicles, 6,245 Commercial Vehicles, 3,999 Commercial and Public Service Vehicles, 29,872 Farm Trucks, 1,799 Exempted Vehicles and 2,521 Government Vehicles. There were also 392 motor buses licensed. Attached to this submission as Appendix B is a statement which is substantially Exhibit 24 already filed in the proceedings of this Commission but which has been revised and brought up to date. This statement defines the various classes of truck licenses in Alberta.

A breakdown of Public Service Vehicle registrations is given in

- (1) Asphalt, concrete or gravel roads.
- (2) For a more complete statistical picture of the subjects covered in this section see Appendix A and the accompanying schedules.
- (3) From April 1, 1948 to March 31, 1949.

Table 1. From this breakdown it is apparent that the largest single group of Public Service Vehicles are engaged in transporting low-valued products such as grain, coal, lumber and gravel. The movement which takes place by trucks in this category is typically short-haul.

The second largest single group in this breakdown comprise the general merchandise haulers. These carriers engage in the transport of all classes of goods and to some extent are complementary but to a more important degree are competitive with movements by rail.

TABLE 1

Public Service Vehicles Registered in Alberta⁽¹⁾
During the Period April 1, 1948 to March 31, 1949

<u>Class</u>	<u>No.</u>
1. Milk, Cream, Poultry Products and Farm Produce	42
Restricted to Dairy Products	26
Restricted to Own Dairy Products ⁽²⁾	9
2. Livestock	nil
3. General Merchandise	3806
4. Petroleum Products in Tanks	285
Crude Oil	37
Own Petroleum Products ⁽²⁾	29
5. Exempted Goods--grain, fodder, coal, cordwood, lumber, railway ties, sand, stone, gravel, clay and brick ⁽³⁾	4307
6. Miscellaneous Combinations:	
Classes 3 and 2 combined	73
Classes 3 and 4 combined	13
Classes 4 and 5 combined	11
Combinations of 2 or more of the first 5 Classes	10
Interprovincial only	13
	<hr/>
Total	8661

(1) Not including PSV Licenses issued to Buses.

(2) In Alberta, it is not possible to get Cargo Insurance on own goods--hence if you are licensed to carry own goods only, you are restricted from carrying anything but your own property.

(3) No Cargo Insurance required.

Table 1 indicates that there are 375 highway carriers in Alberta engaged in the transport of petroleum products. Three of the seven major oil companies in Alberta have Agreed Charge Contracts with the railways, while the other companies to a major extent use highway transport.

The movement of livestock to stockyards in Alberta is predominantly by rail or private truck. Exhibit 23 filed with this Commission on behalf of Federated Co-op Services Ltd. indicates the extent to which the movement of livestock to plants and yards from Alberta points is handled by trucks. A sample taken from the records of the public stockyards at Calgary and Edmonton by the Department of Railways and Telephones of the Government of Alberta indicates that in 1945 in 10 sample weeks there were 50,436 head of livestock moved by rail to these points. In the same period 70,398 head of livestock moved by truck to these same points. Table 2 and 3 give details of this sample by census divisions.

Table 2

Shipments of Livestock to Calgary
during Ten Selected Weeks in 1945--Stockyards Only.

From	Cattle		Hogs		Sheep	
	Truck	Rail	Truck	Rail	Truck	Rail
Census Division 1	11	600	-	-	-	-
" " 2	313	326	41	19	43	-
" " 3	332	991	441	316	58	242
" " 4	3859	939	3801	1	1504	64
" " 5	1930	2255	443	36	441	838
" " 6	11160	1637	9837	-	2009	-
" " 7	87	1705	10	50	8	-
" " 8	1728	2431	850	275	632	416
" " 9	1503	1665	737	39	371	-
Misc. Alta. Stations	182	220	474	-	-	-
Sask. Stations	7	69	3	-	-	109
B. C. Stations	-	518	-	6	9	193
Totals	21,112	13,356	16,637	742	5,075	1862

Source: Transportation Policy and Its Relation to the Livestock Industry in Alberta. Confidential Research Report, Department of Railways and Telephones, Government of Alberta, 1948, unpublished.

Table 3

Shipments of Livestock to Edmonton
during Ten Selected Weeks in 1945--Stockyards Only

From	Cattle		Hogs		Sheep	
	Truck	Rail	Truck	Rail	Truck	Rail
Census Division 7	949	3300	119	218	187	317
" " 8	2082	2185	552	938	215	327
" " 9	106	257	75	26	-	-
" " 10	1057	1616	566	572	199	112
" " 11	4934	384	6417	1357	2203	137
" " 12	232	141	145	429	63	38
" " 13	137	1963	156	7218	54	165
" " 14	1001	1255	1039	5189	328	89
" " 15	98	687	2	332	-	8
" " 16	210	2207	-	598	-	459
Misc. Alta. Stations	1791	387	1931	472	626	194
Sask. Stations	-	24	-	-	-	-
B. C. Stations	98	605	12	186	-	84
	12,695	15,011	11,004	17,535	3,875	1,930
Grand Total	33,807	28,367	27,641	18,277	8,950	3,792

Source: Transportation Policy and Its Relation to the Livestock Industry in Alberta. Confidential Research Report, Department of Railways and Telephones, Government of Alberta, 1948, unpublished.

The extent of highway transport in the carriage of milk, cream butter and cheese is not apparent from Table 1 which lists 77 Public Service Vehicles engaged in this trade. A further study by the Department of Railways and Telephones of the movement of these products in 1947 provides a clearer picture of the extent of this traffic. Tables 4, 5, 6, and 7 detail the figures for truck and rail shipment.

Table 4

Shipments of Cream into Processing Plants

Located in Alberta for the year 1947.

(Thousands of Pounds)

<u>Shipments to:</u>	<u>TRUCK</u>	<u>RAIL EXPRESS</u>
Acme	450	
Brooks	266	
Hanna		777
Sundre	335	
Didsbury	706	
Medicine Hat	514	220
Red Deer	1527	
Calmarr	1613	
Tofield	840	
Bassano	283	50
Bluffton	1796	
Carstairs	580	
Claresholm		78
Cochrane	225	
Pincher Creek		41
Sylvan Lake		54
Alix	1361	
Bentley	536	
Coronation	747	
Delburne	617	
Eckville	728	
Edberg	674	
Elnora	611	
Olds	829	
Ponoka	1338	
Rimbey	532	
Rocky Mt. House	597	
Stettler	911	
Calgary	930	2999
Edmonton	7785	7072
Lethbridge	85	819
Total	27,306	12,110

Source: Transportation Policy and Its Relation to the Dairy Industry in Alberta. Confidential Research Report, Department of Railways and Telephones, Government of Alberta, 1948, unpublished.

Table 5

1947 Butter Shipments to Major Alberta Distributing Centres

			<u>Method of Shipment in Thousands of Lbs.</u>	
<u>FROM</u>		<u>TO</u>	<u>Rail</u>	<u>Truck</u>
Census Division 1 & 3		Lethbridge	-	206
"	"	Calgary	87	374
"	2	Calgary	13	223
"	"	Lethbridge	-	20
"	4	Calgary	-	39
"	5 & 6	Calgary	215	743
"	"	Edmonton	174	-
"	7	Edmonton	-	1,159
"	"	Alix	162	391
"	"	Calgary	29	-
"	8	Calgary	101	870
"	"	Lethbridge	43	129
"	"	Edmonton	-	1,127
"	"	Alix	403	1,252
"	9	Alix	133	396
"	"	Edmonton	-	47
"	"	Calgary	-	156
"	10	Edmonton	469	1,271
"	11	Edmonton	-	2,404
"	"	Calgary	-	629
"	12	Edmonton	-	349
"	13	Edmonton	801	351
"	14	Edmonton	458	883
"	15 & 16	Edmonton	128	18
			<u>3,216</u>	<u>13,037</u>

Source: Transportation Policy and Its Relation to the Dairy Industry in Alberta. Confidential Research Report, Department of Railways and Telephones, Government of Alberta, 1948, unpublished.

Table 6

1947 Cheddar Cheese Shipments to Major Alberta Distributing Centres

			<u>Method of Shipment in Thousands of Lbs.</u>	
<u>From</u>		<u>To</u>	<u>Rail</u>	<u>Truck</u>
Census Division 2 & 3		Calgary	120	80
"	"	Calgary	-	596
"	"	Edmonton	-	47
"	8 & 10	Edmonton	81	646
"	"	Calgary	-	144
"	11	Calgary	-	101
"	"	Edmonton	-	474
Total			<u>201</u>	<u>2,088</u>

Source: loc. cit.

TABLE 7

1947 BUTTER SHIPMENTS FROM ALBERTA TO OTHER POINTS IN CANADA
(1)
MOVEMENT BY RAIL -- EXPRESS, POOL CAR AND CAR LOT

(in pounds)

<u>From</u>	<u>To</u>					
	West Coast	Interior of B. C.	Manitoba	Central Canada	East Coast	Misc.
Edmonton	7,525,770	1,156,423	39,424	627,468	38,528	205,595
Calgary	290,775	664,014	36,568	161,840	80,080	37,543
Central Alta.	5,650,262	-	-	199,895	-	-
Southern Alta.	-	318,017	-	35,840	-	-
	12,466,807	2,138,454	75,992	1,025,043	118,608	243,138
Total:					17,068,042	

Source: op. cit.

- (1) With the exception of a few pounds of butter trucked into the Crows Nest Pass area and a very small local movement between Eastern Alberta and Saskatchewan all interprovincial shipments are made by rail.

Part III - The Regulation and Control of Highway Transport

The problem of controlling the use that is made of public highways has long concerned governments. In general it may be stated that the problem of the use of these highways for private non-commercial operation has been solved. Their use by commercial operators, however, continues to be a matter of contention. In this Part, we will deal with the economic aspects of highway transport as far as commercial vehicles are concerned. More particularly we will deal with common carriers and contract carriers.

A discussion of the regulation and control of highway transport must recognize two distinct divisions of the subject. The first division deals with regulations and controls which are designed to protect the highways and users of the highways; the second includes regulations designed to control the business aspects of highway transport.

The fundamental difference between these two types of regulation and control is in the manner in which they bear upon individual firms in the industry. We may suggest that in an important sense the first type of control is non-economic. It is non-economic because it is not specific, and constitutes part of a general overall pattern of government supervision deemed necessary for the general good. There are many examples of these regulations and controls in the highway transport industry. Such things as tire sizes, signal devices, weight limitations, brake requirements, minimum lighting standards, speed limits and the like are examples.

It is generally admitted that the foregoing type of regulation is both necessary and desirable in the interests of public convenience. The exact point on which this particular regulation should cease is not however always apparent. There is a great temptation to use safety regulations as an indirect means of bestowing economic

advantage or disadvantage. This is most apparent in a developing industry such as highway transport which poses entirely new problems because of its intimate relation to the general public. (1)

The regulative procedure in such a case must be initially pragmatic and transitory, but as general stability is gained it becomes much easier to distinguish legitimate public welfare requirements from those which are repressive, restrictive and discriminatory.

In discussions on highway transport it has not always been recognized that the second division of the subject, namely, control of the business aspects, is essentially separate from safety and highway protection. Many of the demands for regulation of the business of highway carriers have proceeded from arguments premised on some point directly concerned with safety and highway protection. The fact that large trucks may constitute a menace on the highway if driven at excessive speeds is not germane to an argument which advocates business control for trucking companies.

The solution to excessive speeds lies in the field of speed control not business control. Similarly, it has been argued that conditions of employment in the trucking industry are bad and for this reason regulation should be imposed. Once again the solution to this problem is not to be found in business regulation but rather in appropriate laws governing fair employment practices.

(2)

Regulations designed to control the business aspects of highway transport have long been demanded by certain interest groups. The general appeal of these demands has not been very great. A study of the matter indicates that there are sound reasons for not endorsing general highway transport control.

(1) See Jackman, W.T. "Economic Principles of Transportation" Chap. XXI

(2) Business regulation means that the operator must show public convenience and necessity before he can obtain a license; that he must submit his rates to a government rate tribunal for approval and then publish them, and that his routes must be designated.

Any legitimate demand for the control of highway transport must proceed from the assumption that unregulated or non-uniformly regulated highway transport markets function unsatisfactorily in terms of economic results. An attendant assumption is that public control will remedy these undesirable market results.

In appraising the effectiveness of the highway transport market there are two general considerations which must be recognized. The first of these is the matter of the results obtained, between the industry and the shippers; the second is the matter of the results obtained between the trucking industry and other transport agencies.

A. The Highway Transport Industry

The degree to which truck transport operates effectively in terms of satisfactory economic results is determined by the extent and the character of competition in that market. In our submission competition is satisfactory when "it operates overtime to afford buyers substantial protection against exploitation at the hands of sellers and to afford sellers similar protection against exploitation by buyers."⁽²⁾ This criterion must be examined in terms of the number of sellers and buyers in the market, the size of the firms, the ease of entry into the business and the nature of costs.

- (1) The term market does not refer to a physical establishment where trading is carried on (its non-technical sense) but to the actions of buyers and sellers of a service or a commodity in the process of price determination.
- (2) See Competition and Monopoly in American Industry. Monograph No. 21, 76th Congress, Temporary, National Economic Committee.

In the trucking industry there are typically a large number of firms
 (1) in the business and a large number of people demanding service. The
 (2) capital requirements are small and the economics of scale are not
 (3) appreciable, so ease of entry is assured and large consolidations unlikely.
 The high ratio of costs which are variable, even in short periods, has the
 further effect of making prices and costs approach parity. (4) All these
 facts point to the conclusion that truck transport is competitive and in
 terms of criterion satisfactory. What then nurtures the demand for
 business regulation?

The demand for business regulation of highway transport arises because
 of the alleged destructiveness of the competition which it brings to the
 transport industry. Putting aside the demands for control which stem from
 the truck industry itself (which demands it may be noted are made in
 response to the very natural desire of every businessman to enjoy some
 degree of protection for his business) we may consider the following
 (5) aspects of "destructive" competition.

A primary complaint against competition as a regulator has been that
 it brings about a continual condition of financial demoralization in the
 highway transport industry. The implications of this as far as shippers
 and the business community are concerned is that trucking companies can
 not meet their financial obligations and the quality of their service
 consequently drops. Both the carriers and their employees receive less
 than reasonable returns for their capital and labor contributions. The
 public, though, gaining from low rates in the short term, suffers
 ultimately from insufficient or poor-quality service.

This argument is attractive but certainly as far as conditions in
 Alberta are concerned it is not in accord with the facts. Even a cursory
 review of the available statistics confirms this. The number of Public
 Service Vehicles in Alberta has been increasing

- (1) In Alberta there are over 4,000 separate trucking firms and individuals in operation. In most instances a commodity is served by at least two firms.
- (2) The average investment per firm in Alberta does not exceed \$4,000.
- (3) The largest single firm in Alberta operates 40 vehicles.
- (4) Overhead costs in the business of highway transport are low when compared to direct operating costs.
- (5) See Transportation and National Policy, National Resources Planning Board. United States Government, May, 1942. Especially Part I, Section VI, written by Dr. James C. Nelson.

continually. The type of truck equipment in use is better each year and the financial stability of the firms in the industry is at a par with other small capital industries. In Alberta it is unnecessary to artificially increase the profit of transport firms already in the business by restricting price competition. Sufficient quantities of service of a high standard have been provided. Indeed, the effect of restricting competition would quite likely be to lower the quantity of service offered.

While it is true that there was some complaint of irresponsible truck operations in the early days the situation now is that the numerous alternatives available give most shippers adequate protection from this danger. If not, surety bonds and similar minimum standards have superior merit to general restriction of competition. A protected market may enable licensed and certified concerns to raise service standards in terms of reliability and convenience but probably at the expense of higher rates and smaller variety of services.⁽¹⁾

It is also argued that in the absence of business control an oversupply of transport facilities results. This contributes to financial demoralization. Restriction of entry, i.e. the use of the certificate of convenience and necessity, is the direct regulative solution recommended by those advocating greater control.

While it may be that there is excess capacity in highway transport the need of applying business control as a remedy does not automatically follow. An examination of the causes for this excess capacity must first be made. Much of the apparent excess comes from irregularities in daily and seasonal traffic and the

(1) A general index of the extent of monopolistic competition in a market and the monetary value to be attached to it is to be found in the market value of operating rights or some similar restrictive or administrative grant. In the United States it has been demonstrated again and again that highway operating rights have a large monetary value.

need to have facilities to meet peak load requirements. Thus in Alberta there is always an excess of trucking capacity in the winter but such capacity is absolutely necessary in the summer for grain and gravel hauling, to give two examples. Again some excess capacity results from present facilities being made obsolete by the use of improved methods of transport. This must be recognized as a normal accompaniment of a competitive regime. It is helpful to recall that canals were replaced by railways, horses by tractors, and sailing ships by steam. No one questions these displacements. They now seem logical and economic.

All excess capacity cannot be explained in the terms referred to because obviously some of it is related to faulty demand expectations. In our submission it cannot be shown that this situation is peculiar to highway transport nor can it be contended that it is so serious in highway transport as to call for exceptional treatment.⁽¹⁾

- (1) The following is an extract from a letter written by the manager of an old established electrical appliance retail store in Calgary to The Calgary Board of Trade in response to a questionnaire on highway transport. August 19, 1949:

"There has been no control of how many dealers might enter the retail business and it has always been and still is a case of get along as best you can. After the war electrical and radio dealers sprung up everywhere. Manufacturers and wholesale distributors sold each and every one of these new dealers. Countless new dealers, who were not in the appliance business, have been getting refrigerators in the past few years when older and long established dealers, who spent thousands of dollars before the war advertising and promoting the sale of refrigerators have only been able to get from these former supply houses a very very meagre number of them for the simple reason that these supply houses opened up so many new accounts. A great many of these new accounts will not be in business perhaps a few years from now. So, during the period the sales were good, cash plenty, the older dealers were only able to get a quarter as much as they procured from these supply houses in pre-war and early war days.

We did not approve of this, but we did not ask anybody to try to prevent it because we felt that being a democratic and free country that everyone has the right to try whatever vocation he chooses. When a wholesaler or retailer has goods to ship on the highways in Alberta, in my opinion, he should have enough sense to make sure that he is bargaining with the right trucking agency."

It is also argued that excess competition or imperfections in the competitive market lead to a high turnover in highway transport operators. This is not an indication of imperfections in competition but rather proof of the fact that competition exists. True competition necessarily involves some capital loss by particular concerns. Regulation which arbitrarily assures operators a profit can have but one effect - to increase the cost of transport and maintain inefficient operators at public expense.

Another argument for a policy of restricting competition rests on the assumption that free entry into the field of highway transport discourages large-scale operations.⁽¹⁾ It is argued that an excessive number of small firms, induced by ease of entry to compete for available traffic, make it impossible to organize large-scale operations with the implied efficiency of these bigger units. This is a plausible argument but there is scant proof to substantiate it. Large scale operations do not always mean lower per unit costs in an industry and in the field of highway transport it is our submission that they do not. Locklin indicated that what little evidence is available, though inconclusive, does not indicate any more profitable operation for large firms. He suggests that the fact points to the conclusion that small-scale operations are most profitable.⁽²⁾

- (1) See Motor-Carrier Regulation and Its Economic Bases. Quarterly Journal of Economics. Vol. 43, p. 604 and following.
- (2) Locklin, D. Philip. The Economics of Transportation, third edition, 1947, p. 681: "If economies of large-scale enterprise were evident in the motor-carrier industry, a tendency toward the formation of a few large firms would appear. Although some large units have developed, as we have seen, a large number of small operators persists. As yet there is no evidence of lower costs in the larger concerns. Evidence is too limited, however, to permit one to conclude that large units are either more or less economical in the trucking industry. An English writer has pointed out that there is no evidence of greater economy of operation among the large firms in the road transport industry of Great Britain."

The foregoing discussion has detailed the general arguments for business control and for regulation of highway transport as far as the industry itself is concerned. Our research has not indicated that in Alberta in terms of economic results the free functioning of a competitive market for highway transport is not detrimental to the buyers and sellers of transport service. On the contrary it is submitted that an examination of the economics of highway transport reveals that it is one industry which does not require anything but a non-specific control of its operations. We have discussed controls of this nature earlier in this Brief. Our contention is that the real danger lies in the formation of either private or government sponsored monopolistic control of the highway transport industry.

In addition to the specific reasons indicated above, there remains the all important consideration of the inherent right of the individual in a free economy to establish himself in any lawful business he chooses.

The adoption of restrictive measures such as those proposed for highway transport would be the negation of the concept of free enterprise. The Government of Alberta regards this consideration of fundamental importance in any investigation into highway transport in Canada.

B. The Highway Transport Industry and Its Relation to Other Transport Agencies.

Other transport agencies, themselves controlled, have been strong in their demands to have general control instituted over highway transport. It is unsound to suggest: "railways are controlled therefore trucks should be" unless it can be shown that highway transport is in an analagous position to rail transport. It must also be shown that the railways are placed at a disadvantage which can best be remedied by imposing control on highway transport.

The argument that highway transport and rail transport have

similar economic characteristics is one which does not square with the facts. Highway transport is generally competitive while rail transport is generally monopolistic. Although it may be possible to point to exceptions in both cases we refute the idea imported into Canada - to the effect that under present day conditions the railways are no longer monopolistic. In an area such as Western Canada where producing and consuming centers are separated by long distances and dependent upon railroad transport for staple product movements it is highly unrealistic to assert that rail carriage does not have a monopoly.

It is alleged that as a result of administrative control which denies the railroads the right to pick and choose traffic they are placed at a disadvantage when they face truck competition. This argument is not of consequence as far as the Alberta situation is concerned because Section 29, subsection 2, of The Public Service Vehicles Act states:

"No driver or operator of a public service vehicle shall refuse to carry the commodities stated in the owner's certificate if the same are offered in proper condition unless at the time of the offer the vehicle is loaded to capacity or owing to climatic conditions the property is liable to perish in transit."

Other arguments used by the railroads for the purpose of showing that unregulated highway transport creates "unfair" competition concern such things as the "cream of the traffic", public subsidization of highway transport and the lower costs of the railroad. We do not accept the validity of these contentions and in any event it does not automatically follow that the regulation of highway transport is the most effective method to use in ameliorating their influence.

C. The Control of Highway Transport in Alberta.

Highway Transport in Alberta is regulated by two Acts. The Vehicle and Highway Traffic Act applies to all motor vehicles and the Public Service Vehicles Act applies specifically to trucks and buses.

For the consideration and convenience of the Commission there is attached to this brief as Appendix C the office consolidation of the Vehicle and Highway Traffic Act being chapter 275 of the revised Statutes of Alberta, 1942, with ammendments up to and including 1949. The Public Service Vehicles Act, Chapter 276 of the revised Statutes of Alberta, 1942, together with ammendments up to and including 1949 is attached as Appendix D. The regulations under the Public Service Vehicles Act prescribed by the order of the Lieutenant Governor in Council are at present being revised and we hope to be able to file as an exhibit at the Ottawa sittings a copy of these revised regulations.

We are attaching hereto as Appendix E copies of an application for a Public Service or Commercial Vehicle License together with sample license registration certificates.

We are also attaching hereto as Appendix F an official map showing the highways of Alberta.

A perusal of the legislation in force in Alberta demonstrates the fact that the control of highway transport in Alberta is carried to the point where the shipper and the general public receive adequate protection without losing the desirable effects of price competition.

APPENDIX ASchedule 1Annual Registration of Motor Vehicles in Alberta 1920-1948

YEAR	PASSENGER AUTOS	MOTOR TRUCKS	MOTOR BUSES	TOTAL
1920	36575	1500	-	38075
1921	38165	1687	-	39852
1922	38214	1749	-	39963
1923	39742	2191	-	41933
1924	45871	2036	-	47907
1925	50496	3138	-	53634
1926	59767	4362	-	64129
1927	67665	6641	-	74306
1928	78302	8919	-	87221
1929	85087	12482	-	97569
1930	85067	15068	-	100135
1931	78782	15034	-	93816
1932	71717	14293	-	86010
1933	71076	14174	-	85250
1934	73114	15383	-	88497
1935	76562	16353	-	92915
(1) 1936	79185	17310	-	96495
1937-38	81365	18080	-	99445
1938-39	84958	21221	-	106179
1939-40	88270	24369	-	112639
1940-41	92553	26668	150 (2)	119371
1941-42	95921	28224	206	124351
1942-43	92738	30414	192	123344
1943-44	92238	32819	159	125216
1944-45	91500	34365	193	126058
1945-46	87308	35820	197	123325
1946-47	95058	40907	288	136253
1947-48	104350	46219	347	150916
1948-49	114676	53097	392	335938

(1) 1936 figures are for 15 month period Jan. 1, 1936 to March 31, 1937.
 Figures for succeeding years are for 12 month period April 1 to March 31.

(2) Figures for Motor Buses not available separately until 1940-41.

Source: Motor Vehicle Branch of the Provincial Secretaries Department
 and the Highway Traffic Board of Alberta.

APPENDIX ASchedule 2

Annual Provincial Revenue from Motor Vehicle Licenses and
Drivers' Licenses in Alberta, 1922-1947

YEAR	PASSENGER CARS	PUBLIC SERVICE and COMMERCIAL VEHICLES	DRIVERS' and CHAUFFERS' LICENSES	TOTAL
1922	697	-	6	703
1923	724	-	5	729
1924	824	-	6	830
1925	911	-	6	917
1926	1097	-	6	1103
1927	1248	-	7	1255
1928	1556	-	10	1566
1929	1826	-	79	1905
1930	1528	364	25	1917
1931	1064	312	18	1394
1932	1291	317	16	1624
1933	1143	411	16	1570
1934	1174	455	18	1647
1935	1010	478	18	1506
1936	1033	598	137	1778
(1)				
1937-38	1336	629	150	2115
(2)				
1938-39	1281	750	150	2181
1939-40	1382	887	159	2428
1940-41	1438	973	175	2586
1941-42	1558	1103	180	2841
1942-43	1534	1168	182	2884
1943-44	1566	1269	191	3026
1944-45	1507	1385	191	3083
1945-46	1465	1562	209	3236
1946-47	1533	1880	236	3649
1947-48	1674	2210	246	4130

(1) 1936 figures are for 15 month period from Jan. 1/36 to Mar. 31/37

(2) Figures for 1937-38 are for 12 month period from Apr. 1/37 to Mar. 31/38. Figures for succeeding years are on same basis.

Source: The Motor Vehicles Branch of the Dept. of the Provincial Secretary and the Highway Traffic Board of the Province of Alberta.

APPENDIX ASchedule 3Miles of Highway in Alberta

<u>YEAR</u>	<u>EARTH</u>	<u>GRADED</u>	<u>GRAVELLED</u>	<u>ASPHALT</u>	<u>TOTALS</u>
1932-33	207	1619	1133	-	2959
1933-34	207	1618	1154	-	2980
1934-35	311	729	2166	-	3208
1935-36	207	767	2152	92	3219
1936-37	181	765	2160	145	3253
1937-38	429	86788	2754	247	90219
1938-39	428	87416	2713	381	90940
1939-40	498	87981	2971	483	91935
1940-41	474	88201	3010	484	92170
1941-42	457	75019	3310	531	79319
1942-43	466	75599	3660	531	80258
1943-44	60742	14554	4540	531	80368
1944-45	59749	14664	5748	521	80672
1945-46	59113	14933	6732	531	81310
1946-47	45544	24716	9316	531	80107
1947-48	43226	25707	10862	645	80441
1948-49	41329	26663	13137	692	81822

Source: Highways Branch, Department of Public Works,
Government of Alberta

NOTE: Previous to the year 1937-38, the District and Local Road Mileage was estimated and therefore unreliable and not included. From the year 1937-38 to the year 1940-41, the District and Local Road Mileage was estimated by the Municipal Districts, and from the year 1941-42 to the present time, mileage has been kept accurately by the Maintenance Department of the Highways Branch, hence the decrease in total mileage of road between 1940-41 and 1941-42.

Appendix B

Statement of Public Service and Commercial Vehicle Licenses

Issued by the Highway Traffic Board for the License Years

1948, 1949, and 1950 to date.

<u>Plate</u>	<u>Description</u>	<u>1948</u>	<u>1949</u>	
P.S.V.	Public Service Vehicles	7968	8661	7588
C.V.	Commercial Vehicles	3559	6245	7012
C.	Commercial and Public Service	2679	3253	3445
U.	Commercial and Public Service	470	746	913
F.	Commercial Vehicles	25984	29872	31306
X.	Commercial Vehicles	3279	1799	1981
G.	Commercial Vehicles	2280	2521	1971
TR.	Commercial and Public Service	1361	2326	2342
BUS	Public Service Vehicles	347	392	389
L.	Public Service Vehicles	741	674	769
D.U.	Public Service Vehicles	41	57	68
S.V.	Public Service Vehicles	793	914	856
T.	Commercial and Public Service	425	496	453

To give a brief explanation of the basis used in classifying vehicles for licensing purposes and the meaning and import of the plates listed above, we may say that all trucks, semi-trailers, trailers, and passenger-carrying vehicles, exclusive of the ordinary passenger cars, are classified under the Public Service Vehicles Act as either Public Service or Commercial Vehicles.

Public Service Vehicles

In general, a Public Service Vehicle means a motor vehicle trailer or semi-trailer operated on a public highway by, or on behalf of any person, firm or corporation for compensation, whether such operation is regular or only occasional, or for a single trip.

Commercial Vehicles

On the other hand, a commercial vehicle means any truck, trailer, tractor or semi-trailer, except:

- (a) those which are classified as Public Service Vehicles,
- (b) a vehicle which, in the opinion of the Board, is not to be classified as a commercial vehicle.

In this classification is included any motor vehicle from which sales are made of any goods, wares, merchandise, or commodity, and any vehicle by means of which delivery is made of any goods, etc., to any purchaser or consignee of same. In brief, any motor vehicle which falls

under the jurisdiction of the Highway Traffic Board, and which is either excepted or otherwise defined, falls into the commercial category.

Classification of Plates.

Plates listed above as P.S.V. are issued under the Public Service Vehicle classification for those vehicles which are engaged in the business of transporting goods or merchandise for compensation. The other plates designated as C.V. and F. are issued under the Commercial Vehicle classification. C. and U. plates may be issued either under the Public Service Vehicle or Commercial Vehicle classification. Itemizing these, therefore, we have the following:

P.S.V.: Issued to common carriers and contract haulers.

C.V.: Issued to operators of motor vehicles who use such vehicles in connection with their own business of selling and delivery of goods,

F.: Issued to farmers, ranchers, or market gardeners who operate their vehicles in connection with their occupation and not for any other purpose.

C.: Issued to operators of Public Service of Commercial Vehicles within towns and villages and a radius of five miles therefrom. This class of plate is likewise issued to operators of similar vehicles but confined to the boundaries of any city.

U.: Issued to operators of either Public Service or Commercial vehicles limited in scope to the boundaries of any city and a radius of five miles therefrom.

X.: Miscellaneous vehicles such as tow trucks, ambulances, hearses, and vehicles used for personal transportation.

G.: Federal, provincial or municipal governments.

TR.: Tractors operated with trailers.

BUS: For transportation of passengers for hire over specified routes.

L.: Livery and taxi-cab operations.

D.U.: Drive-yourself vehicles.

S.V.: School vans used for the transportation of children to and from schools.

T.: Public Service and Commercial trailers.

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THE VEHICLE AND HIGHWAY TRAFFIC ACT

(OFFICE CONSOLIDATION)

(Being Chapter 275 of the Revised Statutes of Alberta, 1942,
with amendments up to and including 1949.)

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Alberta,
enacts as follows:

Short Title.

1. This Act may be cited as "*The Vehicles and Highway Traffic Act.*" Short title
[R.S.A. 1942, c. 275, s. 1.]

Interpretation.

2. In this Act, unless the context otherwise requires,— Interpreta-
tion
- (a) "Chauffeur" means any person who drives or operates any motor vehicle for the transportation of persons or property, who receives any compensation for so doing by wages, commission or otherwise, paid directly or indirectly, or who as owner or employee drives or operates a motor vehicle carrying passengers or property for gain or reward; Chauffeur
- except,—
- (i) a person who is a farmer or an employee of a farmer and who drives or operates a motor vehicle belonging to the farmer which is used principally for the transportation of the property of that farmer; Exceptions
- (ii) a person who is the owner of a commercial vehicle and who drives or operates that commercial vehicle;
- (b) "Dealer" means any person who buys or sells motor vehicles as a business, either as principal or agent; Dealer
- (c) "Garage" means every place of business which has accommodation for the housing or storage of five or more motor vehicles, and the owner of which receives compensation for such housing or storage; Garage
- (d) "Highway" means every road, street, lane, alley, park, parkway and public place; Highway
- (e) "Highway Traffic Board" means the Highway Traffic Board appointed under *The Public Service Vehicles Act*; Highway
Traffic
Board
- (f) "Liveryman" shall mean a person who keeps motor vehicles for hire; Liveryman

- Minister (g) "Minister" means the Provincial Secretary, except in so far as any of the provisions of this Act apply or relate to,—
- (i) public service vehicles and commercial vehicles within the meaning of *The Public Service Vehicles Act*;
 - (ii) the licensing of operators of public service vehicles and commercial vehicles;
 - (iii) the licensing of chauffeurs;
 - (iv) the financial responsibility of the owners and drivers of public service vehicles and commercial vehicles;
- in which cases "Minister" means the Minister of Public Works;
- "Motor cycle" (gg) "Motor cycle" means a motor vehicle mounted on two or three wheels and includes those motor vehicles known to the trade as motor cycles, scooters and power bicycles;
- Motor vehicle (h) "Motor vehicle" means every vehicle propelled by any power other than muscular power, except tractors equipped with rubber tires, traction engines and such motor vehicles as run only upon rails or tracks;
- Municipality (i) "Municipality" means a city, town, village or municipal district;
- Owner (j) "Owner" includes any person renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period of more than thirty days;
- Peace officer (k) "Peace officer" means a mayor, reeve, sheriff, deputy sheriff, sheriff's officer, justice of the peace, gaoler or keeper of a prison, police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process;
- Pedestrian (l) "Pedestrian" means any person making use of public highways for foot passage;
- Regulation (m) "Regulation" means any regulation made by the Lieutenant Governor in Council pursuant to this Act;
- Vehicle (n) "Vehicle" means a motor vehicle, trailer, traction engine and any vehicle drawn, propelled, or driven by any kind of power, including muscular power; but does not include the cars of electric or steam railways running only upon rails, or trolley buses.

[R.S.A. 1942, c. 275, s. 2; 1949, c. 104, s. 1.]

PART I.

LICENSES AND CERTIFICATES OF REGISTRATION.

General.

3.—(1) No person shall drive any motor vehicle on any highway unless he is licensed so to do pursuant to the provisions of this Act. Driving without license prohibited

(2) No person shall drive any motor vehicle on any highway at any time unless the motor vehicle is registered pursuant to this Act Driving unregistered vehicle prohibited
[R.S.A. 1942, c. 275, s. 3.]

4. Application for a driver's or chauffeur's license or for registration of a motor vehicle shall be made to the Minister in such form and giving such particulars as the Minister may from time to time prescribe. Application for license or registration
[R.S.A. 1942, c. 275, s. 4.]

5. Upon receipt of an application for a driver's or chauffeur's license or for registration of a motor vehicle, the Minister may issue a license or a certificate of registration, as the case may be, in such form, and upon being paid such fees as may be prescribed by the Regulations. Issue of license or registration
[R.S.A. 1942, c. 275, s. 5.]

6. The address of every person to whom any license, certificate or permit is issued shall be given in every such document, and the person to whom it is issued shall, upon changing his address, at once notify the Minister of the change. Address
[R.S.A. 1942, c. 275, s. 6.]

7. The Minister may suspend or cancel any license, certificate or permit issued under the provisions of this Act for misconduct or non-compliance or infraction of any of the provisions of this Act or of the Regulations, or of *The Fuel Oil Licensing Act*, or of *The Fuel Oil Tax Act*, or of *The Criminal Code*, or upon being satisfied of the unfitness, physical or otherwise, of the holder of the license, certificate or permit, or for any other reason appearing to him to be sufficient. Suspension or cancellation of license, certificate or permit
[R.S.A. 1942, c. 275, s. 7.]

8. Subject to the provisions of this Act as to suspension and cancellation, the period of registration for any motor vehicle registered and the period of any license issued to any person licensed as a driver or chauffeur pursuant to Part I, shall be from the first day of April until the ensuing thirty-first day of March (both days inclusive). Duration of licenses and certificates of registration
[R.S.A. 1942, c. 275, s. 8.]

Registration of Vehicles.

9. Subject to the other provisions of this Act,—

- (a) no person who is the owner of any motor vehicle shall operate or suffer or permit any other person to operate the motor vehicle on a highway, at any Operation of unregistered vehicle prohibited

time of which he is not the holder of a subsisting certificate of registration of the motor vehicle issued pursuant to this Act; and •

- (b) no person shall operate on a highway any motor vehicle in respect of which there is not for the time being a subsisting certificate of registration issued pursuant to this Act [R.S.A. 1942, c. 275, s. 9.]

Minister to be informed of transfer motor vehicle

10.—(1) Every person who sells a motor vehicle to any other person and every person who becomes in any manner the owner of any motor vehicle, shall forthwith notify the Minister in writing that he has sold or become the owner of the motor vehicle, as the case may be, in such form and giving such information as the Minister may require.

Registration expires on transfer

(2) Whenever the ownership of a registered motor vehicle passes from the registered owner to any other person, whether by the act of the owner or by the operation of law, the registration of the motor vehicle shall expire upon the fourteenth day after the day upon which the ownership thereof so passes, and the registered owner or his legal representative shall not later than the fourteenth day after the ownership so passes, deliver up to the Department the certificate of registration of the motor vehicle, together with the number plates issued for it to the Minister or to any person authorized by him to receive the same.

Number plates returned to Minister

(3) Upon the passing of the ownership of any registered motor vehicle from the registered owner thereof, either by the act of the owner or by the operation of law, to a person engaged in the business of selling or dealing in motor vehicles whether new or otherwise or engaged in the business of automobile wreckage, if the number plates issued to the registered owner come into the possession of such person, that person shall forthwith return the plates to the Minister.

Re-issue of number plates

(4) Upon the passing of the ownership of a registered motor vehicle from the registered owner to any other person, the number plates issued upon registration may, upon compliance with the regulations and the payment of the prescribed fee, be re-issued to the registered owner or to the person to whom the ownership passes, provided always that the number plates shall not be issued to the person last mentioned without the consent of the registered owner. [R.S.A. 1942, c. 275, s. 10.]

Regulations:

11.—(1) The Lieutenant Governor in Council may from time to time,—

re registration of trailers

- (a) require the registration of vehicles drawn upon any highway by motor vehicles, commonly called trailers, and for that purpose may classify trailers into such classes as may be deemed convenient having regard to carrying capacity, construction,

use or any other circumstance, and may fix the fee payable on registration of all or any class thereof and may fix different fees in respect of different classes at such amounts as may be deemed proper;

- (b) make regulations as to the operation upon any highway of trailers, the lighting or other equipment to be installed thereon, the issuance, form and notice of registration plates, the display of such plates on the trailer, and the lighting or other devices to be used thereon at times when the lamps on the motor vehicle which is drawing a trailer are required to be lit.

re equipment
of trailers

(2) Every order and regulation made pursuant to this section shall be published in *The Alberta Gazette* and shall have force from the date of its publication therein or any later date fixed for that purpose. [R.S.A. 1942, c. 275, s. 11.]

Publication
of regula-
tions

12. Where the owner of a motor vehicle resident outside of the Province has complied with the laws of his place of residence with respect to the registration and licensing of the motor vehicle, and where the motor vehicle carrying displayed thereon the registration number plates for the current year assigned under those laws to that motor vehicle is brought into the Province for temporary use therein for the purpose of touring for pleasure for a period not exceeding six months then the motor vehicle shall be deemed to be registered pursuant to the provisions of this Act.

Registration
of vehicles
of non-
residents

[R.S.A. 1942, c. 275, s. 12; 1949, c. 104, s. 2.]

13.—(1) The Lieutenant Governor in Council may make or authorize to be made a reciprocal arrangement or agreement with the Government of any other province of the Dominion exempting any class or classes of owners of motor vehicles who are ordinarily resident in that other province from the application of the provisions of this Act as to the registration and licensing of motor vehicles and the carrying and displaying upon motor vehicles of licenses and number plates as required by this Act, and providing for the granting by that other province of similar exemptions and privileges with respect to the owners of motor vehicles who are ordinarily resident in this Province.

Reciprocal
arrange-
ments for
exempting
residents of
other prov-
inces from
licensing and
registration

(2) Every arrangement or agreement so made and the exemptions thereunder shall be subject to the condition that no person shall be entitled to any exemption or privilege thereunder in respect of a motor vehicle in this Province unless the owner of the motor vehicle has complied with the law of his place of residence as to the registration and licensing of motor vehicles and carries or causes to be carried on the motor vehicle the certificate or license and the number plates prescribed by the law of that place; and shall also be subject to all further conditions

and restrictions set out in the arrangement or agreement, and to cancellation by the Lieutenant Governor in Council.
[R.S.A. 1942, c. 275, s. 13.]

Registration prohibited when identifying marks obliterated

14.—(1) Subject to the provisions of subsection (2), no motor vehicle, the manufacturer's serial number or similar identifying mark of which has been obliterated, shall be registered.

New identifying mark

(2) Any person who has in his possession any motor vehicle in the condition described in subsection (1) may forthwith file with the Minister satisfactory proof of the ownership of the vehicle and the Minister shall thereupon grant permission to cut, impress, emboss or attach permanently to the vehicle a special identifying number or mark, which thereafter shall be deemed sufficient for the purpose of registration of the vehicle. [R.S.A. 1942, c. 275, s. 14.]

Drivers' and Chauffeurs' Licenses.

Driving without license prohibited

15.—(1) No person except a person temporarily within the Province who is permitted to drive by the law of the country of which he is a resident, shall drive a motor vehicle on any highway at any time during which he is not the holder of a subsisting driver's or chauffeur's license issued pursuant to this Act.

Age limit

(2) No driver's license for a motor vehicle other than a scooter or a power bicycle shall be issued to any person under the age of sixteen years.

(2a) No driver's license for a scooter or power bicycle shall be issued to any person under the age of fourteen years.

(3) A person over the age of fifteen years shall not be deemed to act in contravention of this section if while driving a motor vehicle he is accompanied by a person sitting beside him, who is the holder of a driver's license, and is engaged in teaching the first named to drive.

(4) The application for a driver's license from any person of the full age of fourteen years and under the age of eighteen years, shall be signed by the applicant and by the parent or guardian of the applicant.

[R.S.A. 1942, c. 275, s. 15; 1949, c. 104, s. 3.]

Powers of Minister to examine applicants

16. The Minister may,—

- (a) refuse to issue a driver's or chauffeur's license to any person unless he is satisfied by examination or otherwise of the physical and other competency of the applicant to drive a motor vehicle without endangering the safety of the general public;
- (b) require any applicant to submit himself to examination as to his competency as a driver to a person designated by the Minister as an examiner; and
- (c) from time to time by order under his hand prescribe as to the cases in which an examination as to com-

petency as a driver may be dispensed with and the cases in which it may not be dispensed with.

[R.S.A. 1942, c. 275, s. 16.]

17. Every person driving a motor vehicle shall carry his license with him at all times during which he is in charge of a motor vehicle, and shall produce it when demanded by any peace officer or any inspector appointed under this Act.

Driver's
license
produced
on demand

[R.S.A. 1942, c. 275, s. 17.]

18.—(1) Every person who is the holder of a driver's or chauffeur's license shall, upon being convicted of any offence under this Act or the Regulations or the provisions of section 285 of *The Criminal Code* as amended, forthwith deliver the same to the judge, police magistrate or justice of the peace making the conviction, who shall thereupon indorse thereon the particulars of the conviction.

Conviction
indorsed
on license

(2) Any judge, police magistrate or justice of the peace who convicts any person of an offence under this Act, who is the holder of a driver's or chauffeur's license, may upon making the conviction suspend for such time as he thinks fit or cancel the license, and shall thereupon transmit the suspended or cancelled license to the Minister together with a report setting out the nature of the conviction and the circumstances of the offence; and every such suspension or cancellation shall remain in force unless and until the Minister in his discretion makes an order shortening the term of suspension or annulling the cancellation.

Suspension
of license
and report to
Minister

[R.S.A. 1942, c. 275, s. 18.]

19. Every person to whom a driver's or chauffeur's license has been issued shall in his application for a subsequent license state that he has been so licensed; and no person who is the holder of a valid and subsisting driver's or chauffeur's license shall apply for or obtain another driver's or chauffeur's license, save and except only for the purpose of obtaining a duplicate of a valid and subsisting license which has been lost, or destroyed, or become worn out.

Applications
for sub-
sequent
licenses

[R.S.A. 1942, c. 275, s. 19.]

20.—(1) Any person of the full age of eighteen years or more desiring to drive a motor vehicle as a chauffeur shall apply to the Minister for a chauffeur's license.

Chauffeurs'
licenses

(1a) The Minister may, after careful consideration of the qualifications of any person between the ages of sixteen and eighteen years, who holds a driver's certificate, grant to him a temporary permit for the operating of a motor vehicle as a chauffeur, providing that such motor vehicle is not being used for the purpose of transporting passengers for hire.

Granting of
temporary
permit as
chauffeur

(2) The application shall be accompanied by photographs of the applicant of such size as the Minister may prescribe, taken within thirty days prior to the date of the application.

(3) Upon receipt of an application for a chauffeur's license the Minister may issue the same upon,—

- (a) being satisfied by examination that the applicant is a fit person to receive a chauffeur's license and being satisfied that he is of good moral character, physically fit, and able to drive;
- (b) being paid a fee of three dollars or such other fee as may be prescribed by Order in Council.

(4) One of the photographs hereinbefore provided for shall be affixed to the license prior to its issue to the applicant, and the license shall cease to be valid upon the removal of the photograph therefrom.

(5) Every person receiving a license under the provisions of this section shall write his usual signature upon the margin in the space provided for that purpose, and until the license has been so signed it shall not be valid.

(6) At the time of the issue of a chauffeur's license the Minister shall issue to the chauffeur a metal badge of such pattern as may be prescribed by regulations made under the provisions of this Act.

(7) Every person whilst engaged in work as a chauffeur shall wear his metal badge in such a position as to be conspicuously visible.

(8) A non-resident chauffeur who has complied with the laws of his place of residence as to the licensing of chauffeurs, need not be licensed under the provisions of this section whilst driving the motor vehicle of a non-resident exempt from registration under the provisions of section 12, and for the period specified in that section.

[R.S.A. 1942, c. 275, s. 20; 1943, c. 34, s. 1.]

Duration of
chauffeurs'
licenses

21. The Lieutenant Governor in Council may at any time direct that chauffeurs' licenses shall only be good for such period less than a year as may seem to him proper.

[R.S.A. 1942, c. 275, s. 21.]

Dealers' Licenses.

Number
plates
issued to
dealers and
manufac-
turers

22.—(1) Every person who engages in the business of a manufacturer of motor vehicles or a dealer in motor vehicles, whether new or second-hand, shall comply with the Regulations governing the registration and operation of such motor vehicles.

(2) The number plates issued to manufacturers and dealers shall bear a word, letter or other device sufficient to distinguish them from number plates issued to other persons.

(3) The fee required by the Minister on the issue of such number plates may be of a fixed amount or may vary with the number of number plates issued to the manufacturer or dealer.

(4) The number plates issued pursuant to the provisions of this section shall only be valid in respect of one place of business, provided, however, that where a dealer has more than one place of business in the same municipality, such places shall, for the purposes of this section, be reckoned as one place of business. [R.S.A. 1942, c. 275, s. 22.]

23. No person shall attach to any motor vehicle any number plate issued pursuant to the provisions of the preceding section, nor shall any person use or operate any motor vehicle to which any number plate so issued is attached, except a vehicle which is,—

- (a) kept by him exclusively for sale and not for hire;
- (b) used exclusively in his business of a manufacturer of motor vehicles or a dealer therein for the promotion of sales of such motor vehicles, or as a service motor vehicle in connection with such sales and not as a public service vehicle or commercial vehicle.

[R.S.A. 1942, c. 275, s. 23.]

Use of dealers' plates prohibited except on dealers' cars

PART II.

EQUIPMENT OF VEHICLES.

Number Plates.

24.—(1) At the time of the issue of a certificate of registration the Minister shall issue to the owner of the registered vehicle a set of two number plates or one number plate if the vehicle is a motor cycle, bearing the registration number of the motor vehicle, together with the name of the Province either at length or in an abbreviated form, and the year of the issue.

Issue of certificate of registration and number plates

(2) The Minister shall charge such fees for each set of number plates issued by him as may from time to time be set out in the Regulations. [R.S.A. 1942, c. 275, s. 24.]

25.—(1) In the case of a motor vehicle other than a motor cycle one of the number plates shall be firmly attached to the front of the motor vehicle and one to the back thereof.

Plates firmly attached to vehicle

(2) In the case of a motor vehicle other than a motor cycle the number plate on the back shall be placed on the motor vehicle so that the lower edge thereof shall not be lower than the axle.

(3) In the case of a motor cycle, the number plate shall be firmly attached to the rear mudguard in such a position as to be clearly visible.

(4) In the case of a trailer the number plate shall be placed on the back thereof in such a position that the lower edge of the plate shall not be lower than the axle.

(5) The said plates shall at all times be carried, attached and placed in the manner prescribed by this section.

[R.S.A. 1942, c. 275, s. 25.]

Colour of
plates

26. The number plates shall be of a distinctly different colour or shade for each year and there shall be a marked contrast between the colour of the number plate and that of the numerals or letters thereon.

[R.S.A. 1942, c. 275, s. 26.]

Plates other
than those
issued,
prohibited

27. Subject to the provisions of this Act as to the motor vehicle of a non-resident, no number plate other than that issued by the Minister shall be exposed on any part of a motor vehicle.

[R.S.A. 1942, c. 275, s. 27.]

Plates used
on one
vehicle only

28. No number plate shall be attached to or used upon any motor vehicle other than the one in respect of which it was issued.

[R.S.A. 1942, c. 275, s. 28.]

Position of
plates

29. Every number plate shall at all times be kept in a legible condition, clearly visible and unobscured by any part of the vehicle or its attachments or load, or otherwise howsoever, and shall be kept firmly fastened.

[R.S.A. 1942, c. 275, s. 29.]

Plates
property of
Crown

30. Every number plate issued under the provisions of this Act shall be and remain the property of the Crown and shall be returned to the Minister whenever he so requires.

[R.S.A. 1942, c. 275, s. 30.]

Issuance of
one marker
or number
plate

31.—(1) Notwithstanding any of the requirements of this Act as to number plates, the Minister if he deems it expedient or necessary so to do, may issue one marker or number plate at the time of the issue of a certificate of registration, instead of the prescribed number plate or plates.

Display of
marker or
number plate

(2) The display in the manner set out in the Regulations of the marker or number plate so issued shall be a sufficient compliance for all purposes with the provisions of this Act requiring or relating to the display of number plates.

Reference to
marker or
number plate

(3) Every reference in this Act to a number plate or to number plates shall *mutatis mutandis* be deemed to be a reference to the marker or number plate issued by the Minister pursuant to this section. [R.S.A. 1942, c. 275, s. 31.]

Headlamps and Other Lights.

32.—(1) Every motor vehicle other than a motor cycle shall at all times whilst in operation on a highway be equipped,—

Headlamps

(a) with at least two headlamps at the front and on opposite sides of the vehicle, each of which shall be capable of projecting light for a distance of three hundred feet ahead of the vehicle under normal atmospheric conditions;

- (b) with a tail lamp consisting of a lamp of a capacity of not less than three spherical candle power so constructed as to show a red light plainly visible for a distance of at least two hundred feet from the rear of the vehicle under normal atmospheric night conditions and to illuminate with a white light the number plate fixed on the back of the vehicle so that every letter and figure thereon may be plainly seen at a distance of not less than sixty feet from the rear of the vehicle under normal atmospheric night conditions. Tail lamp
- (2) Every motor cycle shall carry one headlamp at the front and one tail lamp at the back, and the lamps shall in the case of every motor cycle, other than a scooter or power bicycle conform in every respect to those required to be carried by other motor vehicles. Motor cycle lamps
- (3) Every bicycle whilst in operation on a highway at night shall carry one headlamp at the front and one reflector at the rear. Bicycle lamp and reflector
- (4) Each headlamp on a motor vehicle shall be constructed, arranged and adjusted in such a manner that no portion of the direct beam of reflected or refracted light issuing therefrom shall, at a distance of seventy-five feet from the vehicle, rise more than to a point which is four inches less than the height of the headlamp above the plane surface upon which the vehicle stands, and no headlamp shall be placed on the vehicle less than twenty-four inches nor more than fifty inches above the plane surface upon which the vehicle stands. Headlamps beam
- (5) No part of the direct beam of reflected or refracted light projected from any headlamp shall rise more than forty-two inches above the level plane upon which the vehicle stands at a distance of seventy-five feet from the vehicle.
- (6) The use upon any motor vehicle of any headlamp which emits a direct beam of reflected or refracted light in contravention of this provision is prohibited.
- (7) On approaching or being approached by another vehicle proceeding in an opposite direction, and when within not less than four hundred yards of it, any person in charge of a motor vehicle whether in motion or stationary which is equipped with electric headlamps shall dim or drop such headlamps. Headlamps dimmed or dropped
- (8) Any police constable or officer or inspector appointed for carrying out the provisions of this Act or of *The Public Service Vehicles Act*, may stop approaching vehicles when such vehicles have failed to dim or drop their headlights as herein required, and the driver of any such vehicle shall be guilty of an offence and liable on summary conviction to the penalties prescribed under section 105. Power of police re lights

[R.S.A. 1942, c. 275, s. 32; 1949, c. 104, s. 4.]



Auxiliary
driving
lamps and
fog lamps

33.—(1) Any motor vehicle may be equipped with fixed or movable auxiliary driving lamps or fog lamps not exceeding three in number mounted upon the front below the level of the centres of the headlamps and at a height not less than sixteen inches above the level on which the vehicle stands. The term "auxiliary lamp" or "fog lamp" shall denote any combination of reflector, lens and lamp bulb so designed to illuminate the roadway close to and forward or forward and to the sides of the motor vehicle and otherwise meeting the requirements of this section. Not more than two auxiliary lamps or fog lamps, mounted on opposite sides of the vehicle may be used in connection with but not in substitution for headlamps, except under conditions of fog or rain rendering disadvantageous the use of headlamps. In no event shall the number of auxiliary and fog lights upon a motor vehicle exceed a combined total of three and in no event shall more than two of the said lamps be lighted for use with lighted headlamps.

(2) Every auxiliary lamp and every fog lamp used upon a motor vehicle shall be so adjusted and aimed that the top of the main substantial portion of the beam will strike the road at approximately seventy-five feet in advance of the vehicle and will not project a glaring or dazzling light into the eyes of approaching drivers.

[R.S.A. 1942, c. 275, s. 33.]

Lamps re-
quired to be
alight on
vehicles

34.—(1) At any time during the period between one hour after sunset and one hour before sunrise or at any other time when the atmospheric conditions are such that objects on the highway are not plainly visible at a distance of three hundred feet,—

- (a) no motor vehicle shall be in motion on any highway unless both headlamps are alight and are providing sufficient light to make clearly visible objects on the highway at a distance of three hundred feet ahead of the vehicle;
- (b) no motor cycle or bicycle shall be in motion upon any highway unless the lamp or lamps with which it is required to be equipped are alight;
- (c) no motor vehicle shall be in motion upon any highway unless the tail lamp with which it is required to be equipped is alight;
- (d) no motor vehicle shall be stationary on any highway outside the corporate limits of any city, town or village unless it has either a lit tail lamp or a reflector affixed to the left of the rear end thereof of any type approved by the Lieutenant Governor in Council, so fixed as to reflect the lights of any motor vehicle approaching the stationary vehicle from the rear;
- (e) no vehicle other than a motor vehicle, motor cycle or bicycle shall be upon any highway whether in

motion or stationary unless there is displayed thereon at least one light visible at a distance of at least one hundred feet from the front of and behind that vehicle, or in the alternative, there are affixed thereon one reflector towards the front and one reflector at the rear thereof of a type approved by the Lieutenant Governor in Council, so fixed as to reflect the lights of any motor vehicle approaching from the front and the other so fixed as to reflect the lights of any motor vehicle approaching from the rear;

- (f) no vehicle drawn by or attached to a motor vehicle, commonly known as a trailer, shall be upon any highway unless it has affixed at the rear thereof a reflector of a type approved by the Lieutenant Governor in Council so fixed as to reflect the lights of any motor vehicle approaching from the rear.

(2) Any city, town or village may by by-law define an area or areas within which any motor vehicle or other vehicle while stationary upon a highway, shall between the hours of one hour after sunset and one hour before sunrise, have a lighted lamp thereon or a lighted lamp or lamps to the front, and either a red lighted lamp or a reflector of a type approved by the Regulations, to the rear.

[R.S.A. 1942, c. 275, s. 34.]

35.—(1) Any motor vehicle belonging to a municipal fire department may be equipped with such red lights or such other coloured lights as may be designated by by-law of the council.

Fire department vehicles equipped with red lights

(2) No motor vehicle other than a vehicle which is used,—

Prohibition of red lights except on certain vehicles

(a) for the transportation of any member of a fire-brigade or of any fire-fighting equipment; or

(b) for the transportation of any policeman; or

(c) for an ambulance;

shall be equipped with any red light or flashing light visible from the front of the vehicle, except signalling lights for turning.

[R.S.A. 1942, c. 275, s. 35; 1948, c. 73, s. 1; 1949, c. 105, s. 5.]

36.—(1) No motor vehicle shall be equipped with what is known to the trade as a search light.

Search lights prohibited

(2) A spot light may be carried upon any motor vehicle and when the vehicle is in motion the ray of light therefrom shall be directed to the extreme right of the travelled portion of the highway in such a manner that the beam of light shall strike the extreme right of the travelled portion of the highway within seventy-five feet of the vehicle.

Spot lights

[R.S.A. 1942, c. 275, s. 36.]

37. Every vehicle carrying a load which overhangs the rear of the vehicle to the extent of five feet or more shall display upon the overhanging load, at the extreme rear

Red light and flag required on projecting load



end thereof, during the period from one hour after sunset to one hour before sunrise, a red light, and at all other times a red flag, sufficient to indicate the projection of the load.

[R.S.A. 1942, c. 275, s. 37.]

Brakes.

Brakes
required

38.—(1) Every motor vehicle shall be equipped with adequate brakes.

Inspection
of brakes
upon request

(2) Every person driving or operating a motor vehicle on any highway shall upon request of any police constable or of any officer appointed for the carrying out of the provisions of this Act or of *The Public Service Vehicles Act*, permit the constable or officer to inspect and test the brakes with which the motor vehicle is equipped, and for that purpose to operate the motor vehicle, or at the option of the constable or officer the person for the time being operating the vehicle shall operate the motor vehicle as directed by him for the purpose of the inspection and testing of the brakes, and the constable or officer shall, if the brakes are not adequate, notify the person operating the vehicle thereof, and thereupon the operator shall forthwith proceed to have the brakes made adequate.

Two-wheel
service
brakes

(3) The service brakes upon any motor vehicle which is equipped with two-wheel brakes shall be deemed to be not adequate unless they are capable of bringing the vehicle to a standstill when the brakes are applied when the vehicle is moving at a speed of twenty miles an hour within a distance of forty feet from the point at which the brakes are applied, when loaded to its full capacity on a level surface consisting of dry paving of asphalt or concrete which is free from loose material.

Service
brakes on
other
vehicles

(4) The service brakes upon any other motor vehicle or combination of vehicles shall be deemed to be not adequate unless they are capable of bringing the vehicle or combination of vehicles to a standstill when the brakes are applied when the vehicle or combination of vehicles is moving at a speed of twenty miles an hour within a distance of thirty feet from the point at which the brakes are first applied, when loaded to its full capacity on a level surface consisting of dry asphalt or concrete paving free from loose material.

Hand brake

(5) The hand brake upon any motor vehicle or combination of motor vehicles shall be deemed to be not adequate unless it is capable of bringing the vehicle or combination of vehicles to a standstill when the brake is applied when the vehicle or combination of vehicles is moving at a speed of twenty miles an hour within a distance of fifty-five feet from the point at which the brake is first applied, when loaded to its full capacity on a level surface consisting of dry asphalt or concrete paving free from loose material; and shall be capable of holding the vehicle or combination of vehicles at a standstill upon any grade upon which the same is operated.

(6) All brakes shall at all times be maintained in good working order and shall be so adjusted that the brake pressure upon the wheels on each side of the vehicle is as nearly as possible equal. [R.S.A. 1942, c. 275, s. 38.] Brake adjustment

General.

39.—(1) Every motor vehicle, motor cycle and bicycle shall be equipped with an adequate horn, gong or bell and it shall be kept in good working order and shall be sounded whenever it is reasonably necessary to warn persons on or approaching the highway in the vicinity of the vehicle or motor cycle or bicycle. Horn required

(2) No person having the control of any motor vehicle, motor cycle or bicycle shall use the horn, gong, bell or other signalling device thereon except for the purpose of giving notice to persons on or approaching the highway in the vicinity of the motor vehicle, motor cycle or bicycle of the approach of the vehicle, and in so doing shall not make any more noise than is reasonably necessary for [R.S.A. 1942, c. 275, s. 39.] Use of horn

40.—(1) Every motor vehicle using gasoline or other fluid of a like nature shall be equipped with a muffler of such kind and description as to prevent any unreasonable noise in the operation of the engine of the vehicle. Muffler required

(2) No person operating, or having under his control, or in his charge any motor vehicle on any highway in any city, town or village, shall cut out the muffler, or open the cut-out of the vehicle, while the engine thereof is in operation. [R.S.A. 1942, c. 275, s. 40.]

41.—(1) Every motor vehicle shall carry a mirror securely attached to it and placed in such a position as to afford the driver a clear view of the roadway in the rear, and of any vehicle approaching from the rear. Rear vision mirror

(2) In any case where the view afforded by any such mirror is obstructed or interfered with by a trailer attached to the motor vehicle or otherwise, a side rear vision mirror or other mirror shall be attached to the motor vehicle and placed in such a position as to afford the driver a clear view of the roadway in the rear and of any vehicle approaching from the rear. [R.S.A. 1942, c. 275, s. 41.]

PART III.

RATE OF SPEED.

42.—(1) No person shall drive a motor vehicle on a highway at any rate of speed which is unreasonable having regard to all the circumstances of the case, including the nature, condition and use of the highway, and the amount Driving at unreasonable rate of speed



of traffic which then is, or might reasonably be expected to be, on the highway.

Speed limit

(1a) No person shall drive a motor vehicle on a highway at a rate of speed greater than fifty-five miles per hour.

Speed limit
at night

(1b) No person shall drive a motor vehicle on a highway at a rate of speed greater than forty-five miles per hour at any time when its headlamps are required to be alight.

Speed
prima facie
unreasonable

(2) Any person driving any motor vehicle within any city, town or village at a greater rate of speed than twenty-five miles per hour, or at a greater rate of speed than ten miles per hour in turning a corner, shall *prima facie* be deemed to be driving at an unreasonable rate of speed.

Blind curves
or corners

(3) Any person driving a motor vehicle, when approaching or at a street corner or curve where the driver of the vehicle has not a clear view of the approaching traffic, at a greater rate of speed than ten miles per hour in a city, town or village, or twelve miles per hour outside a city, town or village, shall *prima facie* be deemed to be driving at an unreasonable rate of speed.

[R.S.A. 1942, c. 275, s. 42; 1948, c. 73, s. 2.]

Speed limit
in special
cases

42a.—(1) The Lieutenant Governor in Council, from time to time, in respect of any designated highway or portion thereof, may by order, fix a maximum speed limit applicable to all vehicles or to any class or classes of vehicles while travelling over the said highway or portion thereof designated in the order.

Publication
of order

(2) Any order made pursuant to subsection (1) shall be published in *The Alberta Gazette* and the Minister of Public Works shall erect such signs along the highway or portion thereof as he deems adequate to notify any person driving a vehicle thereon of the maximum speed limit so fixed.

(3) No person shall drive a motor vehicle on any highway or portion thereof designated in the order at any rate of speed in excess of the maximum speed limit fixed by the said order and published by the signs erected as aforesaid.

[1949, c. 104, s. 6.]

Speed while
siren being
sounded

43. Any motor vehicle equipped with a siren,—

- (a) which is being used for the transportation of any member of a fire brigade or any policeman or any fire-fighting equipment to a fire; or
- (b) which is being used for the transportation of any policeman for the purpose of detecting or preventing crime or making arrests; or
- (c) which is an ambulance and is being used in response to an emergency call,—

may whilst being so used and whilst the siren is being continuously sounded be operated at such speed as is reasonable and proper having regard to the traffic ordin-

arily upon and the use of the highway and the fact that it is being so used. [R.S.A. 1942, c. 275, s. 43.]

43a.—(1) The Minister of Public Works or any engineer employed by the Department of Public Works, by an order in writing, may fix a maximum speed limit in respect of any designated highway under construction or repair or portion thereof, applicable to all vehicles or to any class or classes of vehicles while travelling over the said highway or portion thereof designated in the order. Speed limit when highway under construction

(2) The Minister of Public Works shall erect such signs along the said highway under construction or repair or portion thereof designated in the order as he deems adequate to notify any person driving a motor vehicle of the maximum speed limit so fixed. Erection of signs by Minister of Public Works

(3) No person shall drive a motor vehicle on any highway or portion thereof designated in the order at any rate of speed in excess of the maximum speed limit fixed by the said order and published by the signs erected as aforesaid. Prohibition of excessive speed
[1948, c. 73, s. 3.]

(4) In any prosecution under this section an order in writing purporting to be signed by the Minister of Public Works or by any engineer employed by the Department of Public Works shall be admissible in evidence without proof of the signature and shall be *prima facie* evidence that the order was made as it purports to have been. Order in writing prima facie evidence
[1948, c. 73, s. 3; 1949, c. 104, s. 7.]

44.—(1) The council of a municipality or other authority having jurisdiction over a highway may make regulations limiting the rate of speed of any vehicle passing over a bridge, and may therein fix a penalty not exceeding twenty dollars for the breach thereof, and notice of the limit of speed fixed by the regulation shall be posted up in a conspicuous place at each end of the bridge. Speed on bridges

(2) Such notice shall be in the following form:

“NOTICE.

“Any person riding or driving over this bridge at a faster rate than miles an hour shall, on conviction thereof, be subject to a fine of dollars.” [R.S.A. 1942, c. 275, s. 44.]

PART IV.

RULES OF THE ROAD.

45. Outside the limits of cities, towns and villages, any person operating a motor vehicle, upon approaching a graded portion of any highway where, on account of the manner of the construction of the grade, it is impossible or dangerous for the motor vehicle and another motor Passing on graded highway

vehicle or a horse or horses being driven in an opposite direction to pass each other, shall, before entering upon or along the graded portion of the highway, stop the motor vehicle, and if any other motor vehicle or horse or horses being driven as aforesaid, is or are upon the graded portion, wait until the motor vehicle, horse or horses have first passed along the grade and passed the motor vehicle before he proceeds. [R.S.A. 1942, c. 275, s. 45.]

Passing on
hill, curve
or bridge

46. No person driving a motor vehicle shall pass or attempt to pass any other motor vehicle proceeding in the same direction on any hill, curve or bridge or any of the approaches thereto. [R.S.A. 1942, c. 275, s. 46.]

Vehicle
keeps to
the right

47.—(1) Any person acting as the driver of a vehicle shall when meeting another vehicle keep his vehicle at all times to the right of the centre line of the highway.

Vehicle
overtakes
and passes
on the left

(2) If any person acting as the driver of a vehicle desires to pass another vehicle or horseman travelling upon a highway in the same direction, he shall sound his horn before commencing to pass and he shall in passing keep his vehicle to the left of the other vehicle or horseman or to the left side of the centre line of the highway.

Highway
clear when
passing

(3) Any person acting as the driver of a vehicle shall not drive to the left side of the centre line of a highway in overtaking and passing another vehicle or horseman unless the left side of the highway is free of approaching traffic for a sufficient distance ahead to permit such person to overtake and pass the other vehicle or horseman in safety.

Vehicle
being over-
taken allows
free passage

(4) If any horseman or person acting as the driver of a vehicle is overtaken upon a highway by a vehicle travelling in the same direction, he shall allow such vehicle to pass and shall keep to the right of the centre line of the highway so as to allow the free passage of the road by the overtaking vehicle.

(5) If any driver of a vehicle cannot for any reason keep to the right or the left of the centre line of the highway so as to allow the immediate free passage of the road by another vehicle, as directed by this section, he shall stop and, if necessary, aid the driver of the other vehicle to pass in any manner practicable.

Bicycles,
horses and
slow-moving
vehicles
required
to keep to
right

(6) Any person riding a bicycle or a horse and any person acting as the driver of a slow-moving vehicle shall ride or drive as near to the right side of the travelled portion of the highway as circumstances and weather conditions permit.

Prohibition
of riding
more than
two abreast

(7) No bicyclist, motorcyclist or horseman shall ride more than two abreast on any highway.

Travelling
of bicyclists,
etc., in
single file in
certain cases

(8) If two or more bicyclists, motorcyclists or horsemen are overtaken on a highway by a vehicle travelling in the

same direction which sounds its horn to pass, the bicyclists, motorcyclists or horsemen, as the case may be, shall travel in single file and shall ride as near to the right side of the travelled portion of the highway as circumstances and weather conditions permit.

[R.S.A. 1942, c. 275, s. 47; 1948, c. 73, s. 4.]

48.—(1) No person shall drive a motor vehicle to which a siren is attached other than a motor vehicle which is used,— Siren prohibited

(a) for the transportation of any member of a fire brigade or of any fire fighting equipment; or

(b) for the transportation of any policeman; or

(c) for an ambulance,—

unless the Minister has specifically authorized him so to do.

(2) Any person driving a motor vehicle and meeting or being overtaken by a motor vehicle on which a siren is being sounded, shall, bring the vehicle he is driving to a stop at the extreme right hand side of the highway as soon as is reasonably possible, and shall remain stopped until the vehicle sounding its siren has passed. Vehicles stop when siren sounded

[R.S.A. 1942, c. 275, s. 48; 1949, c. 104, s. 8.]

49.—(1) No person shall park or leave standing any vehicle, whether attended or unattended, upon the travelled portion of a highway outside of a city, town or village, when it is practicable to park or leave the vehicle off the travelled highway; provided, that in any event, no person shall park or leave standing any vehicle, whether attended or unattended upon the highway unless a clear and unobstructed width opposite the vehicle is left for free passage of other vehicles thereon, and unless a clear view of the parked or standing vehicle may be obtained for a distance of two hundred feet along the highway in both directions. Parking on highway

(2) No vehicle shall remain at a standstill on any highway for longer than one minute at any place which is within thirty feet of the point of intersection of that highway with any other highway.

[R.S.A. 1942, c. 275, s. 49.]

50. The driver of every vehicle shall, before turning the vehicle to right or left or stopping it, give such signals of his intention so to do in such manner as may be prescribed by the Regulations. Driving signals

[R.S.A. 1942, c. 275, s. 50.]

51. Any person driving a vehicle on a highway shall, at the intersection of the highways, keep to the right of the intersection of the centre lines of the highways when turning to the right, and keep to the right of the intersection of the centre lines when turning to the left. Turning at intersections

[R.S.A. 1942, c. 275, s. 51.]



Yielding of
right-of-
way

52.—(1) When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right, except as otherwise provided in this Part.

(2) The driver of a vehicle approaching but not having entered an intersection shall yield the right-of-way to a vehicle within the intersection and turning therein to the left across the line of travel of such driver if the driver of the vehicle turning left has given a plainly visible signal of his intention so to turn.

[R.S.A. 1942, c. 275, s. 52; 1947, c. 67, s. 1.]

Stop streets

53.—(1) Every vehicle being about to enter upon any main or secondary Provincial highway as defined in *The Public Highways Act*, or upon any other highway, which, at the request of the local governing body has been designated and marked as a highway at which vehicles are required to stop, or upon any intersection at which it is required to stop by any by-law of any city, town or village, shall be brought to a stop at a point not less than ten feet nor more than fifty feet from such highway, and shall not enter upon the highway either for the purpose of crossing it or of proceeding along it until the conditions of traffic on the highway are such that the vehicle can enter upon the highway with safety.

(2) The driver of a vehicle entering a highway from a private road or drive or from an alley-way or lane or from a street or highway on which he is required to stop before entering such highway, shall yield the right-of-way to all vehicles upon such highway. [R.S.A. 1942, c. 275, s. 53.]

Driving in
city, town
or village

54. No person shall drive any vehicle on any street or highway within any city, town or village in such a manner that the same crosses from one side of the street or highway to the other side thereon between intersecting streets or highways. [R.S.A. 1942, c. 275, s. 54.]

Maintenance
vehicles

55. Notwithstanding any other provision of this Act, every person whilst engaged upon the work of maintenance of a highway shall be entitled to drive or operate any vehicle required for the work, upon such portion of the highway as may be requisite for the necessary, regular or convenient discharge of his duties.

[R.S.A. 1942, c. 275, s. 55.]

Passing
street car or
school van
prohibited

56. When a street railway car or a van operated by a school district for the transportation of school children, which bears a sign both in the front and rear thereof with the words "School Van" thereon, has stopped to receive or discharge passengers, no vehicle shall overtake and pass such car or van until all persons who are about to enter or leave the same are safely clear of the path of the vehicle:

Provided, however, that nothing in this section shall be deemed to prevent any vehicle from passing a stationary

street railway car at an intersection where a safety zone has been provided for passengers.

[R.S.A. 1942, c. 275, s. 56.]

57. An operator of any vehicle, when transporting gasoline other than the gasoline used for propelling the vehicle and contained in the tank or container of the motor vehicle, shall, before proceeding over any level railway crossing, whether or not a train can be seen or heard approaching the crossing, bring the vehicle to a dead stop and shall not proceed until satisfied that it is safe to do so.

Gasoline
trucks stop
at railway
crossings

[R.S.A. 1942, c. 275, s. 57.]

58.—(1) If an accident occurs to any person whether on foot or horseback or in a vehicle, or to any horse or vehicle in charge of any person in which accident a motor vehicle is in any manner, whether directly or indirectly involved the person in charge of the motor vehicle shall return to the scene of the accident, render all reasonable assistance, and give to any person sustaining loss or injury or to any peace officer or to a witness, his name and address, and also the name and address of the owner of the motor vehicle, and the registration number of the motor vehicle, together with such other information as may be requested.

Driver to
return to
scene of
accident

(2) Every person in charge of a motor vehicle who is directly or indirectly involved in an accident shall, if the accident results in personal injuries, or in damage to property apparently exceeding seventy-five dollars, report the accident forthwith to the nearest police officer or constable, and furnish him with a written statement concerning the accident on such forms as may be prescribed by the Minister.

Report
accident
to police

(3) Where such person is physically incapable of making a report, and there is another occupant of the motor vehicle, the other occupant shall make the report.

Inability
to report

(3a) Any written statement made pursuant to the provisions of subsection (2) or subsection (3) shall be without prejudice, shall not be open to public inspection, and the fact that such statement has been so furnished shall be admissible in evidence solely to prove compliance with this section, and no such statement or any part thereof shall be admissible in evidence for any other purpose in any trial, civil or criminal, arising out of a motor vehicle accident.

Written
statement
privileged

(4) Every police officer or constable receiving a report of an accident shall secure from the person making the report, or by other inquiries where necessary, such particulars of the accident, the persons involved, the extent of the personal injuries or property damage, if any, and such other information as may be necessary to complete a written report concerning the accident to the Minister.

Information
to police

(5) Every officer or constable of the Royal Canadian Mounted Police, and every chief of police, municipal clerk, or officer or constable of municipal police who receives or completes any report made pursuant to this section shall,

Police report
to Minister



within twenty-four hours after the receipt or completion of the report, mail or deliver a copy of the same to the Minister on such forms as may be prescribed by the Minister.

Insurance
claims
reported to
Minister

(6) Every insurance company which receives a claim, under a motor vehicle liability policy, in respect of personal injuries, or damage to property exceeding seventy-five dollars, shall forthwith give notice thereof to the Minister and shall furnish such other information as the Minister may require.

[R.S.A. 1942, c. 275, s. 58; 1947, c. 67, s. 2; 1949, c. 104, s. 9.]

PART V.

RIGHTS AND DUTIES OF PEDESTRIANS.

Pedestrians
observe
traffic
signals at
intersections

59.—(1) At intersections of highways where traffic is controlled by traffic control signals, pedestrians shall cross the highway only in the direction in which vehicles are permitted to move, and drivers of vehicles when turning, shall yield the right-of-way to pedestrians when so crossing.

Pedestrians
have right of
way at
intersections

(2) The operator of a vehicle or street railway car shall yield the right-of-way to a pedestrian crossing the roadway upon or within any crossing at an intersection except at intersections where the movement of traffic is regulated by a police officer or traffic control signal, or at any point where a pedestrian tunnel or overhead crossing has been provided. This provision shall not relieve the pedestrian from the duty of exercising due care for his safety.

Passing
stopped
vehicle at
intersection
prohibited

(3) Whenever any vehicle is stopped at a marked crossing or at any intersection to permit a pedestrian to cross the roadway, it shall be unlawful for the operator of any other vehicle approaching from the rear to overtake and pass the stopped vehicle.

Vehicles
have right of
way between
intersections

(4) Every pedestrian crossing a roadway at any point other than within a marked or unmarked crossing shall yield the right-of-way to vehicles and street railway cars upon the roadway, provided that this provision shall not relieve the driver of a vehicle or street railway car from the duty of exercising due care for the safety of pedestrians.

Traffic
signals at
intersections

(5) At intersections where traffic is controlled by traffic control signals or by a police officer, operators of vehicles and street railway cars shall yield the right-of-way to pedestrians crossing or those who have started to cross the roadway on a green or "go" signal, and in all other cases, pedestrians shall yield the right-of-way to vehicles and street railway cars lawfully proceeding directly ahead on a green or "go" signal:

Proviso

Provided, however, that the provisions of this subsection shall not apply so as to make it unlawful for street railway

cars or trolley buses forming part of the municipal street railway system of a city to turn to the right or to the left at the intersections referred to herein, without regard to the illuminated traffic control signals.

(6) In any case where a sidewalk or path is located beside any highway, pedestrians shall at all times when reasonable and practicable to do so, use the sidewalk or path, and shall not walk or remain on the highway; provided, however, that this provision shall not relieve the driver of a vehicle from the duty of exercising due care for the safety of pedestrians.

Pedestrians
required to
use walks

(7) No person shall walk or remain on the paved or travelled portion of a highway otherwise than close to his left hand edge of that portion and any driver approaching and passing a pedestrian so walking on a highway shall drive as near to the centre of the road as he may safely do, and shall pass on the right hand side of such person.

Pedestrians
keep to the
left

[R.S.A. 1942, c. 275, s. 59.]

PART VI. PROHIBITIONS.

60. No person shall use, interfere or tamper with any motor vehicle or any of its accessories, or anything placed therein or thereon, without the consent of the owner.

Use of motor
vehicle with-
out consent
prohibited

[R.S.A. 1942, c. 275, s. 60.]

61. No person shall,—

- (a) deface or alter any number plate issued under the provisions of this Act; or
- (b) use or permit the use of any defaced or altered number plate; or
- (c) permit any number plate issued to him to be used in contravention of the provisions of this Act.

Improper
use of and
defacing
number
plates
prohibited

[R.S.A. 1942, c. 275, s. 61.]

62. No vehicle shall be operated on any highway unless all the requirements of Part II as to the equipment thereof are at all times complied with.

Operation
without
proper
equipment
prohibited

[R.S.A. 1942, c. 275, s. 62.]

63.—(1) No person shall throw, place, leave or allow to be left upon a highway any glass, nails, scraps of metal or other material injurious to the tires of a motor vehicle.

Depositing
of material
on highway
prohibited

(2) No person shall unless authorized so to do by the highway authority, deposit ashes, sand, soil, or any other matter upon a snow-covered highway.

[R.S.A. 1942, c. 275, s. 63; 1948, c. 73, s. 6.]

64.—(1) No person who owns, controls or is in possession of any live stock shall knowingly permit any such live stock to stray or remain upon any highway, both sides of

Live stock
on highway
prohibited



which are abutting on property which is separated from the highway by a fence, wall, hedge, sidewalk, curb, lawn or building, unless the stock is in charge and control of some competent person or persons.

(2) Between the hours of sunset and sunrise, no person shall drive any live stock upon, over or across any highway without keeping a sufficient number of herders on duty to open the road and permit the passage of vehicles at any time.

(3) In this section, "highway" means main highways, secondary highways, and district highways as defined in sections 7, 9, and 11, respectively of *The Public Highways Act*. [R.S.A. 1942, c. 275, s. 64; 1948, c. 73, s. 7.]

Employment
of driver
other than
chauffeur
prohibited

65.—(1) No person shall employ for hire anyone who is not the holder of a chauffeur's license, to drive a motor vehicle.

(2) Except as otherwise provided herein, no person shall permit anyone who is not the holder of a driver's or chauffeur's license to drive his motor vehicle.

[R.S.A. 1942, c. 275, s. 65.]

Renting to
unlicensed
person
prohibited

66. No person shall hire or let for hire a motor vehicle unless the person by whom the motor vehicle is to be driven is authorized under the provisions of this Act to drive the motor vehicle [R.S.A. 1942, c. 275, s. 66.]

Racing
prohibited

67. No person shall drive a motor vehicle upon a highway in a race, or on a bet or wager.

[R.S.A. 1942, c. 275, s. 67.]

Prohibition
as to
passengers
impeding
driver

67a.—(1) No person acting as the driver of a vehicle upon any highway shall permit any person to occupy the front seat thereof in such a manner as to impede the driver in the free and uninterrupted access to and use of the steering wheel, brakes and other equipment required to be used for the safe operation of the said vehicle, nor shall any such driver permit any person in the vehicle to cause any obstruction to his clear vision in any direction.

Non-inter-
ference with
driver's
control

(2) No person in any vehicle upon any highway shall ride in such position as to interfere with the driver's control over the driving mechanism of the vehicle or so as to obstruct his clear vision in any direction. [1948, c. 73, s. 8.]

Speed of
scooter or
power bicycle
governed

67b. No person under the age of sixteen years shall drive any scooter or power bicycle unless the motor of such vehicle is so adjusted or governed that it is unable to attain a speed in excess of twenty miles per hour.

[1949, c. 104, s. 10.]

Tractors
subject to
rules of
road

67c.—(1) No person who drives a tractor equipped with rubber tires upon any highway shall violate any rule of the road contained in sections 45 to 58 inclusive of Part IV.

(2) For the purpose of any rule of the road contained in Part IV and of any other provisions of this Act relating to the enforcement of any such rule of the road every tractor equipped with rubber tires which is driven upon any highway shall be deemed to be a motor vehicle within the meaning of this Act. [1949, c. 104, s. 10.]

68.—(1) No person shall in respect of any motor vehicle other than a motor vehicle duly licensed under *The Public Service Vehicles Act*, sell or offer to sell tickets for the transportation of passengers or property by means of a motor vehicle in any case where that transportation involves the travel by motor vehicle over any highway or part of a highway outside the corporate limits of any city, town or village. Sale of tickets, etc., prohibited unless licensed under *The Public Service Vehicles Act*

(2) No person shall in respect of any motor vehicle other than a public service vehicle duly licensed under *The Public Service Vehicles Act*, or a motor vehicle licensed for the purposes of the business of a liveryman, by advertising or otherwise solicit the transportation of passengers or property by means of a motor vehicle in any case where that transportation involves the travel by motor vehicle over any highway or part of a highway outside the corporate limits of any city, town or village.

(3) No person not being the owner or operator of a public service vehicle or the authorized agent of such owner or operator shall operate a travel bureau or place for the sale of tickets or for soliciting or advertising the sale of tickets for the transportation of persons on highways outside of a city, town or village by motor vehicle.

[R.S.A. 1942, c. 275, s. 68.]

69. Every person who is driving a vehicle shall, immediately he is signalled or requested to stop by a constable or police officer in uniform, bring his vehicle to a dead stop and furnish such information respecting the vehicle as the constable or police officer may require and shall not start the motor vehicle until such time as he is permitted so to do by the constable or police officer.

Driver required to stop by police

[R.S.A. 1942, c. 275, s. 69.]

70.—(1) No person other than the highway authority or a person authorized so to do by the highway authority, shall erect or display on or in the vicinity of any highway any sign or notice giving any warning or direction as to the use of any highway by any person on a highway. Erection of signs prohibited

(2) No person shall throw down, deface or otherwise injure any sign lawfully erected by or under the direction of the highway authority for the purpose of guiding or warning motorists or other travellers. Defacement of signs prohibited

[R.S.A. 1942, c. 275, s. 70.]



Sale of parts
prohibited

71.—(1) No person shall sell or offer for sale or expose for sale any portion of a motor vehicle or of the engine thereof or any accessory therefor which has been serially numbered by the manufacturer or maker, if the serial number has been removed, obliterated or effaced or if the serial number is not clearly visible.

(2) This section shall not apply to the sale of tires which are sold as seconds. [R.S.A. 1942, c. 275, s. 71.]

Possession
of license
prohibited

72. No person shall use or be in possession of a driver's or chauffeur's license belonging to any other person or of a driver's or chauffeur's license which is fictitious or which has been cancelled or suspended, nor shall any person who holds a driver's or chauffeur's license permit any other person to use or be in possession of such license.

[R.S.A. 1942, c. 275, s. 72.]

Application
for new
license
prohibited
when old
license is
suspended,
etc.

73. No person shall apply for or procure or attempt to procure the issuance of a new driver's or chauffeur's license to himself during a period when his license is cancelled or suspended or during a period when he is disqualified from holding a license, notwithstanding that the year for which the license was issued has expired.

[R.S.A. 1942, c. 275, s. 73.]

Application
for registra-
tion
prohibited
when al-
ready sus-
pended etc.

74. No person shall apply for or procure or attempt to procure the registration of a motor vehicle during a period when the registration of the motor vehicle or the certificate of registration issued therefor is suspended or cancelled.

[R.S.A. 1942, c. 275, s. 74.]

Certain
uses of
chauffeur's
badge
prohibited

75. No chauffeur shall permit any other person to possess or use his badge, nor shall any person use or possess,—

- (a) a chauffeur's badge belonging to another person;
- (b) a chauffeur's badge issued or renewed in respect of any year other than the current year;
- (c) a fictitious chauffeur's badge.

[R.S.A. 1942, c. 275, s. 75.]

PART VII.

ADMINISTRATION.

General.

Powers,
duties and
functions
vested in
Minister
of Public
Works

76. All the powers, duties and functions vested in, imposed on, or exercised by the Minister pursuant to any of the provisions of this Act in so far as they apply or relate to,—

- (a) public service vehicles and commercial vehicles within the meaning of *The Public Service Vehicles Act*;
 - (b) the licensing of operators of public service vehicles and commercial vehicles;
 - (c) the licensing of chauffeurs;
 - (d) the financial responsibility of the owners and drivers of public service vehicles and commercial vehicles,—
- are hereby vested in and imposed on the Minister of Public Works, and shall be exercised and administered by him under the provisions of *The Public Service Vehicles Act*.
[R.S.A. 1942, c. 275, s. 76.]

77. The Lieutenant Governor in Council may on the recommendation of the Minister appoint such persons or officers as may be deemed necessary for enforcing and
[R.S.A. 1942, c. 275, s. 77.]

Appointment
of officers

78. All members of the Royal Canadian Mounted Police and all police constables and officers and all other peace officers, shall be *ex officio* officers for the purpose of carrying out and enforcing the provisions of this Act.
[R.S.A. 1942, c. 275, s. 78.]

R.C.M.P. and
police
ex officio
officers

79. The Lieutenant Governor in Council may on the recommendation of the Minister, make such regulations as are necessary to carry out the provisions of this Act according to their obvious intent or to meet cases which arise and for which no provision is made by this Act, and without in any way restricting the generality of the foregoing, may make regulations,—

Regulations

- (a) prescribing forms and fixing the times at which and the persons to whom returns shall be made;
- (b) prescribing the design and position of lights and reflectors to be used upon vehicles;
- (c) prescribing the requirements as to brakes on motor vehicles and requiring the periodic inspection, testing and adjustment thereof;
- (d) prescribing the form, design and manner of display of any marker or number plate issued by the Minister instead of the prescribed number plate or plates, and making any incidental provisions that may be necessitated by the substitution of the marker or number plate for the prescribed number plate or plates;
- (e) prescribing any equipment required and the types and uses thereof on motor vehicles;
- (f) requiring the periodic inspection, testing, and adjustment of any mechanical equipment of any motor vehicle;



- (g) prescribing and requiring the use of devices and other means to prevent accidents or thefts of motor vehicles;
- (h) prescribing fees for licenses, permits and certificates required pursuant to this Act or the Regulations;
- (i) prescribing terms and conditions governing the registration, use and operation of motor vehicles whether new or second-hand, which are owned, kept or used by any manufacturer or dealer;
- (j) prescribing generally as to any other matter or thing deemed necessary for the better carrying out of the intention and the provisions of this Act, the doing of which is permitted by this Act.

[R.S.A. 1942, c. 275, s. 79.]

Appointment
of motor
vehicle
inspectors

80.—(1) The Minister may from time to time appoint such persons as he may think fit as motor vehicle inspectors who shall have such duties as may be assigned to them by him.

Delegation
of Minister's
powers

(2) The Minister may delegate all powers conferred upon him by this Act to such person or persons as he may deem advisable.

[R.S.A. 1942, c. 275, s. 80.]

Powers of Officers.

Inspection
of dealers'
premises in
daytime

81. Any motor vehicle inspector appointed by the Minister or any police officer or constable shall have the right and power without further authority in the daytime, that is to say, in the interval between six o'clock in the forenoon and nine o'clock in the afternoon of the same day, to enter the business premises of any dealer in motor vehicles, or person or persons conducting a motor vehicle livery, or other place where motor vehicles are kept for hire or sale, for the purpose of ascertaining whether or not the provisions of this Act are being complied with in respect to the motor vehicles in any of such places and by the several employees therein.

[R.S.A. 1942, c. 275, s. 81.]

Production
of license

82. Every driver of a motor vehicle shall produce his license for inspection when requested to do so by any inspector or peace officer.

[R.S.A. 1942, c. 275, s. 82.]

Inspection
of vehicle
on highway

83. Any inspector or peace officer may at any time stop and inspect or cause to be inspected any equipment on a vehicle on a highway and may, if such equipment or any part thereof does not conform with the provisions of this Act or the Regulations, require the driver or owner thereof to have the equipment made to comply therewith, and the driver or owner thereof shall forthwith proceed to comply with the Act or the Regulations.

[R.S.A. 1942, c. 275, s. 83.]

84. Any inspector or peace officer who has reason to believe that a motor vehicle is carrying number plates which were not issued for it, or which although issued for it were obtained by false pretences, may take possession of such number plates and retain them until the facts as to the carrying of such number plates have been determined. [R.S.A. 1942, c. 275, s. 84.]

Seizure of
number
plates

85. Every inspector or peace officer upon the discovery of any motor vehicle apparently abandoned on or near a highway or of any motor vehicle without proper registration plates, may take the motor vehicle into his custody and may cause it to be taken to and stored in a suitable place and all costs and charges for removal, care or storage thereof, shall be a lien upon the motor vehicle and the same may be enforced in the manner provided by *The Possessory Liens Act*. [R.S.A. 1942, c. 275, s. 85.]

Seizure of
abandoned
vehicle

86. Every inspector or peace officer who on reasonable and probable grounds believes that any person has committed an offence against any of the provisions of the sections hereinafter enumerated, whether it has been committed or not, may arrest such person without warrant, whether such person is guilty or not:

Arrest
without
warrant

- (a) Section 61 relating to the defacing of number plates;
- (b) Section 28 relating to the exposing of numbers other than those upon the number plates in compliance with the provisions of this Act;
- (c) Section 42, relating to rate of speed of motor vehicles;
- (d) Section 67, relating to the driving of motor vehicles in a race, or on a bet or wager;
- (e) Subsection (2) of section 70, relating to the defacement of signs.

[R.S.A. 1942, c. 275, s. 86; 1944, c. 3, s. 1.]

87. Every person called upon by an inspector or peace officer to assist the inspector or peace officer in the arrest of a person suspected of having committed any of the offences mentioned in the last preceding section, is justified in so doing if he knows that the person calling on him for assistance is an inspector or peace officer, and does not know that there are no reasonable grounds for his suspicion. [R.S.A. 1942, c. 275, s. 87.]

Assistance
to inspector
or peace
officer

88.—(1) Every inspector or peace officer who on reasonable and probable grounds, believes that any of the offences enumerated in section 86 has been committed, may seize and detain any motor vehicle in respect of which the offence has been committed until the final disposition of any proceedings which may be taken under the

Seizure of
vehicle when
offence
committed



Release provisions of this Act, and whilst so detained, may make such examinations and tests thereof as he deems proper.

(2) Any motor vehicle so seized may be released on security not exceeding one hundred dollars, being given to the satisfaction of the inspector, peace officer, or justice of the peace or police magistrate, as the case may be.
[R.S.A. 1942, c. 275, s. 88.]

Trial or warrant required without delay **89.** Every inspector or peace officer who arrests without a warrant any person pursuant to section 86, shall take the person so arrested without delay before a justice of the peace or a police magistrate and proceed with the trial of such person or obtain a warrant for his arrest.
[R.S.A. 1942, c. 275, s. 89.]

Dealers' Reports.

Reports of dealers in second-hand motor vehicles **90.** Every person who buys, sells, wrecks or otherwise deals in second-hand motor vehicles shall forward to the Minister a record of the same in such form, with such particulars and at such times as the Minister may from time to time prescribe.
[R.S.A. 1942, c. 275, s. 90.]

Report to police if identifying marks obliterated **91.—**(1) If a motor vehicle, the manufacturer's serial number or other identifying mark of which has been obliterated or is illegible, is offered for sale to any dealer in motor vehicles, he shall forthwith report the matter to the nearest police officer and shall not buy, sell, wreck or otherwise deal with any such vehicle until he has received convincing proof that the person offering the motor vehicle for sale has the right to sell the same.

Record kept (2) Every dealer buying any such motor vehicle shall keep a record of the purchase and of the facts convincing him of the right of the person offering the motor vehicle for sale to sell the same.
[R.S.A. 1942, c. 275, s. 91.]

Report to Minister of suspicious circumstances **92.** Every person who buys, sells, wrecks or stores motor vehicles shall, if a motor vehicle remains in his possession without good reason or under suspicious circumstances, forthwith report the matter to the Minister.
[R.S.A. 1942, c. 275, s. 92.]

Reports required from all dealers **93.—**(1) Every dealer shall, prior to the sixth day of each month, forward to the Minister a record of all motor vehicles sold and delivered by him in Alberta during the preceding month.

(2) The dealer shall give in such record the name and address of the purchaser of each vehicle comprised in the record and such further particulars as the Minister may require, and shall send therewith a statutory declaration as to the truth of the statements therein contained.

[R.S.A. 1942, c. 275, s. 93.]

PART VIII.

PROCEDURE AND EVIDENCE.

94.—(1) When any loss or damage is sustained or incurred by any person by reason of a motor vehicle in motion, the onus of proof that the loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or driver of the motor vehicle shall be upon the owner or driver of the motor vehicle.

Onus on owner or driver of motor vehicle

(2) This section shall not apply in the case of a collision between motor vehicles upon a highway.

[R.S.A. 1942, c. 275, s. 94.]

95. Where a motor vehicle is operated upon a highway in contravention of any provision of this Act, and loss or damage is sustained by any person thereby, the onus of proof that the loss or damage did not arise by reason of the contravention of this Act shall be upon the owner or driver thereof.

Onus where Act contravened

[R.S.A. 1942, c. 275, s. 95.]

96. The owner of a motor vehicle for which a certificate of registration has been issued under the provisions of this Act shall be guilty of an offence and liable for any violation of any of the provisions thereof in connection with the operation of the motor vehicle, unless the owner proves to the satisfaction of the justice of the peace or police magistrate trying the case that at the time of the offence the motor vehicle was not being driven by him or by any other person with his consent, express or implied:

Onus on owner to disprove liability if Act violated

Provided that if the owner was not at the time of the offence driving the motor vehicle, he shall not in any event be liable to imprisonment. [R.S.A. 1942, c. 275, s. 96.]

97. Upon any person being charged with an offence under any of the provisions of this Act, if the justice of the peace or police magistrate trying the case be of opinion that the offence was committed wholly by accident or misadventure, and without negligence, and could not by the exercise of reasonable care or precaution have been avoided, the justice of the peace or police magistrate may dismiss the case.

Accident or misadventure without negligence

[R.S.A. 1942, c. 275, s. 97.]

98. The proceedings upon information for an offence against any of the provisions of this Act where a previous conviction is charged shall be as follows:

Proceedings upon information where previous offence charged

- (a) The justice or police magistrate shall in the first instance inquire concerning the subsequent offence only, and if the accused be found guilty thereof he shall then and not before be asked whether he was so previously convicted as alleged



in the information and if he answers that he was so previously convicted, he shall be sentenced accordingly; but if he denies that he was so previously convicted, or does not answer the question, the police magistrate or justice of the peace shall then inquire concerning the previous conviction or convictions;

- (b) For the purpose of a second, third or subsequent conviction under the provisions of this Act, a copy of the certificate of a prior conviction made by the convicting police magistrate, the justice of the peace or one of the convicting justices of the peace, or the certificate of the Minister, shall be *prima facie* evidence of the prior conviction without proof of the signature or official character of the person signing the certificate and without proof of the identity of the person charged with the person named in the certificate;
- (c) In the event of any conviction for any second or subsequent offence becoming void or defective after the making thereof, by reason of any previous conviction being set aside, quashed or otherwise rendered void, the justice or police magistrate by whom the second or subsequent conviction was made shall summon the person convicted to appear at a time and place to be named and shall thereupon, upon proof of the due service of the summons, if such person fails to appear or on his appearance, amend the second or subsequent conviction and adjudge such penalty or punishment as might have been adjudged had the previous conviction never existed; and the amended conviction shall thereupon be held valid to all intents and purposes as if it had been made in the first instance.

[R.S.A. 1942, c. 275, s. 98.]

Prima facie
evidence of
ownership,
or of sus-
pension or
revocation

99. When proof of ownership of any motor vehicle or of the suspension or revocation of any license issued under the provisions of this Act is required, the production of a certificate purporting to be under the hand of the Minister or his deputy, to the effect that the person named therein is the registered owner of the vehicle, or that the license of the person named therein has been suspended or revoked, shall be *prima facie* evidence thereof, without proof of signature or official character. [R.S.A. 1942, c. 275, s. 99.]

Convicting
magistrate
forwards to
Minister a
summary
of facts

100.—(1) In any case where any person who is the holder of a driver's or chauffeur's license or in whose name a vehicle is registered, is convicted of an offence against the provisions of this Act, the judge, police magistrate, or justice of the peace before whom the person was convicted, shall forward to the Minister with the conviction, a summary outlining the facts and circumstances surround-

ing the accident and setting forth the name, address and description of the person so convicted, the number of the motor vehicle, the number of the section of the Act contravened, and the time the offence was committed.

(2) If the offence was committed by a licensed chauffeur the convicting magistrate shall also set forth the number of his license and the name, address and description of his employer.
[R.S.A. 1942, c. 275, s. 100.]

101. Nothing in this Act shall be construed to curtail or abridge the right of any person to prosecute an action for damages by reason of injuries to person or property resulting from the negligence of the owner or operator of any motor vehicle or from the negligence of any agent or employee of the owner.
[R.S.A. 1942, c. 275, s. 101.]

Action for
negligence
not affected

102. In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle upon a highway, every person driving the motor vehicle who is living with and as a member of the family of the owner thereof and every person driving the motor vehicle who has acquired possession of it with the consent, express or implied, of the owner thereof shall be deemed to be the agent or servant of the owner of the motor vehicle and to be employed as such, and shall be deemed to be driving the motor vehicle in the course of his employment, but nothing in this section shall relieve any person deemed to be the agent or servant of the owner and to be driving the motor vehicle in the course of his employment from the liability for the damages.

Persons
deemed to be
agent or
servant of
owner

[R.S.A. 1942, c. 275, s. 102.]

103.—(1) No action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of twelve months from the time when the damages were sustained.

Limitation
of actions

(2) Notwithstanding subsection (1) of this section, when an action is brought within the time limited by this Act for the recovery of damages occasioned by a motor vehicle and a counterclaim is made or third party proceedings are instituted by a defendant in respect of damages occasioned in the same accident, the lapse of time limited by this Act shall be no bar to the counterclaim or third party proceedings.

(3) Any prosecution or proceedings taken or instituted to enforce the provisions of this Act or the Regulations, shall be commenced within one month of the time when the offence was committed and not afterwards.

[R.S.A. 1942, c. 275, s. 103.]



Limitation
of action by
gratuitous
passenger

104.—(1) No person transported by the owner or driver of a motor vehicle as his guest without payment for the transportation, shall have a cause of action for damages against the owner or driver for injury, death or loss, in case of accident, unless the accident was caused by the gross negligence or wilful and wanton misconduct of the owner or operator of the motor vehicle, and unless the gross negligence or wilful and wanton misconduct contributed to the injury, death or loss for which the action is brought.

(2) The provisions of this section shall not relieve any person transporting passengers for hire or gain or any owner or operator of a motor vehicle while the motor vehicle is being demonstrated to a prospective purchaser, of responsibility for any injury sustained by a passenger being transported for hire or gain or by any such prospective purchaser.

[R.S.A. 1942, c. 275, s. 104.]

PART IX.

OFFENCES AND PENALTIES.

Violation of
Act or
Regulations

105. Except as otherwise provided herein, any person violating any of the provisions of this Act or the Regulations shall be guilty of an offence and liable on summary conviction,—

- (a) for a first offence to a penalty of not more than twenty dollars and costs;
- (b) for a second offence to a penalty of not more than fifty dollars and costs;
- (c) for a third or subsequent offence to a penalty of not more than one hundred dollars and costs.

[R.S.A. 1942, c. 275, s. 105.]

Failure to
produce
license

106. Any person failing to produce his driver's or chauffeur's license when demanded by any police officer or inspector, shall be guilty of an offence and liable upon summary conviction to a penalty of not more than five dollars and costs.

[R.S.A. 1942, c. 275, s. 106.]

Failure to
forward
dealers'
reports

107. Any person who fails to forward to the Minister any record as required by the provisions of Part VII, shall be guilty of an offence and liable on summary conviction to a penalty not exceeding ten dollars for every day during which the default continues.

[R.S.A. 1942, c. 275, s. 107.]

108. Every person who operates any vehicle on any highway without complying with the requirements of Part II as to equipment, and every person by whose permission any vehicle is so operated, shall be guilty of an offence in respect of each and every requirement which is not complied with. [R.S.A. 1942, c. 275, s. 108.]

Equipment
of vehicles

109. Any person who obstructs, molests or interferes with any inspector, police officer or constable in the performance of duties imposed upon him by this Act, shall be guilty of an offence and liable on summary conviction,—

Obstruction
of officers

- (a) for a first offence to a penalty of not more than one hundred dollars and costs;
- (b) for a second offence to a penalty of not more than three hundred dollars and costs;
- (c) for a third or subsequent offence to a penalty of not more than five hundred dollars, or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

[R.S.A. 1942, c. 275, s. 109.]

110. Any person who knowingly makes any false statement of fact in any application, declaration, or other document required by this Act or by the Regulations, or by the Minister, in order to procure the issue to him of a license or certificate of registration, shall be guilty of an offence and liable on summary conviction in addition to any other penalty or punishment to which he may be liable,—

False state-
ments in
applications
or declara-
tions

- (a) for a first offence to a penalty of not more than one hundred dollars and costs;
- (b) for any subsequent offence to a penalty of not more than two hundred dollars and costs, or to imprisonment for any term not exceeding one month, or to both fine and imprisonment.

[R.S.A. 1942, c. 275, s. 110.]

111.—(1) Any person who operates a motor vehicle without a subsisting certificate of registration thereof, or without a subsisting driver's or chauffeur's license, as the case may be, shall be guilty of an offence and liable upon summary conviction,—

Operation of
vehicle
without
certificate
or license

- (a) for a first offence to a penalty of not more than one hundred dollars and costs or to imprisonment for a term not exceeding thirty days, or to both such fine and imprisonment;
- (b) for any subsequent offence to a penalty of not more than five hundred dollars and costs or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) Any person who operates a motor vehicle after the cancellation or suspension of the certificate of registration thereof, or of his driver's or chauffeur's license, as the case

Operation of
vehicle when
license or
certificate
cancelled



may be, shall be guilty of an offence and liable on summary conviction to the penalties provided in subsection (1).

[R.S.A. 1942, c. 275, s. 111; 1949, c. 104, s. 11.]

Unreason-
able rate
of speed

112.—(1) Any person violating the provisions of Part III shall be guilty of an offence and liable on summary conviction,—

- (a) for a first offence to a penalty of not more than fifty dollars and costs;
- (b) for a second offence to a penalty of not more than one hundred dollars and costs;
- (c) for a third or subsequent offence, to a penalty of not more than two hundred dollars and costs, or to imprisonment for a term of not less than two weeks nor more than one month, or to both penalty and imprisonment.

Forfeiture
of license

(2) The license of any person committing any offence against the provisions of Part III subsequent to a conviction for a second offence under that part, shall *ipso facto* become forfeited, cancelled and void.

[R.S.A. 1942, c. 275, s. 112.]

Indorsation
of conviction
on license,
permit or
certificate

113.—(1) Whenever any person who is the holder of any license, permit or certificate of registration issued pursuant to this Act is convicted of an offence against any of the provisions of this Act, the convicting judge, police magistrate, or justice of the peace, shall indorse on such license, permit or certificate of registration the particulars of the conviction, and may suspend or cancel the license, permit or certificate of registration.

Non-resident
prohibited
from driving

(2) Whenever any person temporarily within the Province who is licensed to drive by the law of the place of which he is a resident is convicted of an offence against any of the provisions of this Act the judge, police magistrate or justice of the peace making the conviction, shall indorse on such person's license to drive, the particulars of the conviction and may by order prohibit such person from driving in the Province either permanently or for such period as may be stated in the order and indorsed on the license.

Offence

(3) Any person who drives a motor vehicle in the Province during a period when he is prohibited from driving in the Province by an order made under subsection (2) shall be guilty of an offence against this Act.

[R.S.A. 1942, c. 275, s. 113; 1949, c. 104, s. 12.]

Unlighted
bicycle

114. Any person who has a bicycle on any highway in contravention of paragraph (b) of subsection (1) of section 34, shall be guilty of an offence and liable on summary conviction,—

- (a) for a first offence to a penalty of not more than ten dollars and costs;

- (b) for a second or subsequent offence, to have the bicycle impounded for a period of not less than seven days, and to a fine of not more than twenty dollars and costs. [R.S.A. 1942, c. 275, s. 114.]

115.—(1) Where any person has been convicted of any offence against the provisions of section 42 or section 67 committed in a city, and is within a period of one year thereafter convicted of a similar offence in any city, the magistrate, justice of the peace or justices of the peace making the conviction may by the conviction or by a subsequent order direct that the motor vehicle in which the offence was committed, if the person convicted is the owner thereof, or has any beneficial interest therein, shall be impounded and kept by the police at the cost and risk of the person so convicted, for not more than fourteen days. Impounding
of motor
vehicle

(2) When any person after having been convicted of any offence which may lead to the impounding of his motor vehicle is subsequently convicted of any offence against the provisions of section 42 or section 67 within a city, the vehicle in which the offence was committed may be impounded under the same conditions as are set out in subsection (1) hereof, save that the impounding may be for a period of not more than six months.

(3) The proper cost of keeping and storing any motor vehicle so impounded shall be paid by the person convicted upon his conviction and if not so paid shall be deemed to form a lien upon the motor vehicle, and shall moreover be recoverable by distress in the same manner as any fine imposed under this Act. [R.S.A. 1942, c. 275, s. 115.]

116. Any person violating any of the provisions of section 68 shall be guilty of an offence and liable on summary conviction to a penalty of not more than two hundred dollars and costs, and in default of payment to imprisonment for a term of not more than ninety days. Sale of
tickets

[R.S.A. 1942, c. 275, s. 116.]

117. Every person who,—

- (a) brings any motor vehicle into the Province for temporary use for the purpose of touring for pleasure, and fails in contravention of section 12, to give the notice required by section 12; or
- (b) makes in any notice given by him for the purposes of section 12 any false statement; or
- (c) being in possession of a motor vehicle in respect of which a wind-shield sticker has been issued under section 12, and being requested by any police officer or constable to display the sticker, refuses or fails to display the sticker; or

Offences
by a
non-resident

(d) being in possession of a motor vehicle in respect of the entry of which into the Dominion a customs permit has been obtained, and being requested by any police officer or constable to exhibit the customs permit, refuses or fails to exhibit the same,— shall be guilty of an offence and liable on summary conviction to a penalty of not more than three hundred dollars.

[R.S.A 1942, c. 275 s. 117.]

PART X.

RIGHTS OF MUNICIPALITIES.

Disposition
of penalties

118.—(1) A moiety of all fines and penalties imposed by this Act shall enure to the benefit of the municipalities within which convictions are made, in all cases in which prosecutions have been instituted by or under municipal authorities, or by officers appointed by them, and the other moiety thereof shall belong to the Province and form part of the General Revenue Fund.

(2) In all other cases the fines and penalties shall enure to the benefit of the Province and shall form part of the General Revenue Fund.

(3) Any moiety payable to a municipality shall be transmitted and forwarded by the convicting magistrate, justice or justices of the peace to the treasurer of the municipality, and the other moiety, or all of the fine in case it belongs to the Province, to the Attorney General, forthwith after conviction.

[R.S.A. 1942, c. 275, s. 118.]

Taxation
by municipalities

119. Except when an Act specifically enacts to a contrary effect, no municipality shall have the power to pass, enforce or maintain any by-law requiring from any owner of a motor vehicle or chauffeur, any tax, fee, license or permit for the use of the public highways, or excluding any of such persons from the free use of the public highways, except upon such driveway, speedway or road as has been or may be expressly set apart by by-law for the exclusive use of horses and light carriages, or which shall in any way affect the registration or numbering of motor vehicles or authorizing a greater rate of speed than is herein permitted, or forbidding the use of the public highways, contrary to or inconsistent with the provisions of this Act; and all such by-laws now in force are hereby declared to be of no validity or effect:

Provided that nothing in this section shall be deemed to derogate from the power of any city, town or village to pass a by-law requiring that all vehicles shall be brought to a stand-still before entering upon any highway or highways specified in the by-law.

[R.S.A. 1942, c. 275, s. 119.]

PART XI.

FINANCIAL RESPONSIBILITY OF OWNERS
AND DRIVERS.

120. In this Part,—

Interpreta-
tion

(a) "Authorized insurer" means any person authorized to carry on the business of automobile insurance in the Province of Alberta;

Authorized
insurer

(b) "Driver's license" means an operator's license and a chauffeur's license issued pursuant to the provisions of this Act;

Driver's
license

(c) "Motor vehicle" includes "Trailer" as defined in this Act;

Motor
vehicle

(d) "Proof of financial responsibility" means a certificate of insurance, a bond, or a deposit of money or securities given or made pursuant to the provisions of this Part;

Proof of
financial re-
sponsibility

(e) "State" means one of the United States of America, or the District of Columbia;

State

(f) "Superintendent of Insurance" means the Superintendent of Insurance appointed pursuant to *The Alberta Insurance Act*.

Superinten-
dent of
Insurance

[R.S.A. 1942, c. 275, s. 120.]

121. Nothing in this Part shall be construed in such a way as to affect, diminish or derogate from any right of action, remedy or security which any person may have either at law or equity.

Saving of
rights

[R.S.A. 1942, c. 275, s. 121.]

122.—(1) A motor vehicle liability policy referred to in this Part shall be a driver's or owner's policy in conformity to the provisions of Part VII of *The Alberta Insurance Act*.

Motor
vehicle
liability
policy
defined

(2) Any insurer which has issued a motor vehicle liability policy shall, as and when the insured requests, deliver to him for filing, or file direct with the Minister, a certificate for the purposes of this Part.

Certificate
on issuance
of policy

(3) Such a certificate filed with the Minister shall be a conclusive admission by the insurer that a policy has been duly issued and is in accordance with the terms of the certificate.

Conclusive
admission
by insurer

(4) Every insurer shall notify the Minister of the cancellation or expiry of any motor vehicle liability policy for which a certificate has been issued at least ten days before the date of the cancellation or expiry, and, in the absence of the notice, the policy shall remain in full force and effect.

Notification
of termina-
tion of
policy

(5) Where a person who is not a resident of the Province is a party to an action for damages arising out of a motor vehicle accident in the Province, for which indemnity is provided by a motor vehicle liability policy, the

Duty of in-
surer where
non-resident
a party to
action for
damages



insurer named in the policy shall, as soon as it has knowledge of the action from any source, and whether or not liability under the policy is admitted, notify the Minister in writing, specifying the date and place of the accident and the names and addresses of the parties to the action and of the insurer, which notification shall be open to inspection by parties to the action.

Rejection by
Minister of
certain
certificates

(6) The Minister may decline to accept as proof of financial responsibility the certificates of any insurer which fails to comply with the provisions of the preceding subsection.

[R.S.A. 1942, c. 275, s. 122.]

Suspension
of driver's
license and
registration
compulsory
in case of
unsatisfied
judgment
for damages

123.—(1) Subject to the provisions of section 132, the Minister shall suspend the license of a driver or chauffeur and the registration of every motor vehicle registered in the name of a person who fails to satisfy a judgment rendered against him, by any court in Alberta, or in any other province of Canada, which has become final by affirmation on appeal or by expiry without appeal of the time allowed for appeal, for damages on account of injury to, or death of any person, or on account of damage to property in excess of one hundred dollars, occasioned by a motor vehicle, within fifteen days from the date upon which the judgment became final, upon receiving a certificate of the final judgment from the court in which the same is rendered, and every such license and registration shall remain suspended, and shall not at any time thereafter be renewed, nor shall any new driver's license be issued to, or new registration be permitted to be made by the person liable until the judgment is satisfied or discharged (otherwise than by a discharge in bankruptcy) to the extent of at least five thousand dollars (exclusive of interest and costs) for injury to, or death of any one person, and, subject to that limit for each person so injured or killed, to the extent of at least ten thousand dollars (exclusive of interest and costs), for bodily injury to, or death of two or more persons in any one accident, and to the extent of at least one thousand dollars (exclusive of interest and costs), for damage to property of others not being properly carried in the motor vehicle which occasioned the accident, resulting from any one accident, and until such person gives proof of his financial responsibility.

Extension of
subsection
(1) to extra-
provincial
judgments

(2) The Lieutenant Governor in Council, upon the report of the Minister that any other province of Canada or any state has enacted legislation similar in effect to subsection (1), and that such legislation extends and applies to judgments rendered and become final against residents of that other province or state by any court of competent jurisdiction in the Province of Alberta may, by proclamation, declare that the provisions of subsection (1) of this section shall extend and apply to judgments rendered and become final against residents of the Province by any court of competent jurisdiction in such other province or state.

(3) If, after proof of financial responsibility has been given, any other judgment against such person for any accident which occurred before the proof was furnished, and after the first day of June, 1933, is reported to the Minister, the driver's license and every registration of a motor vehicle of such person shall again be, and remain, suspended until the judgment is satisfied and discharged (otherwise than by a discharge in bankruptcy) to the extent set out in the next preceding subsection.

Further
suspensions
in case of
further
judgments

(4) If any person to whom subsection (1) applies is not resident in the Province, the privilege of operating any motor vehicle in the Province, and the privilege of operation in the Province of any motor vehicle registered in his name shall be and is suspended and withdrawn forthwith by virtue of such judgment until he has complied with the provisions of this section.

Suspensions
in the
case of non-
residents

[R.S.A. 1942, c. 275, s. 123.]

124.—(1) The Minister shall suspend the driver's or chauffeur's license and the registration of every motor vehicle, registered in the name of a person, who by an order, judgment or conviction of a court, magistrate or justice of the peace in the Province has been convicted of any one of the following offences or violations of law, or who, having been arrested for any such offence or violation, has forfeited his bail, namely:

Suspension
of license
and
registration
compulsory
on
conviction
for certain
offences

- (a) Driving a motor vehicle on a highway at an unreasonable rate of speed in contravention of subsection (1) of section 42 if injury to property in excess of seventy-five dollars or to any person occurs in connection therewith;
- (aa) Driving a motor vehicle on a highway at a rate of speed greater than fifty-five miles per hour in contravention of subsection (1a) of section 42 or greater than forty-five miles per hour in contravention of subsection (1b) of section 42 if in either case injury to property in excess of seventy-five dollars or to any person occurs in connection therewith;
- (b) Driving a motor vehicle when approaching or at a street corner or curve in such a manner as to contravene the provisions of subsection (3) of section 42 if injury to property in excess of seventy-five dollars or to any person occurs in connection therewith;
- (c) Driving a motor vehicle upon a highway in a race or upon a bet or wager contrary to the provisions of section 67 if injury to property in excess of seventy-five dollars or to any person occurs in connection therewith;
- (d) Upon the occurrence of an accident, failing to return to the scene of the accident or otherwise con-

Breach of
subsection
(1) of
section 42

Breach of
subsection
(3) of
section 42

Racing

Failure to
return to
scene of
accident



travelling any of the provisions of section 58 if injury to property in excess of seventy-five dollars or to any person occurs in connection therewith;

Driving
without
license

- (e) Driving a motor vehicle on a highway without a driver's or a chauffeur's license in contravention of any of the provisions of this Act if injury to property in excess of seventy-five dollars or to any person occurs in connection therewith; or

Offences
under *The
Criminal
Code*

- (f) An offence under section 285 of *The Criminal Code* and amendments thereto or manslaughter committed by a person in charge of a motor vehicle;

and such license and registration shall remain so suspended and shall not at any time thereafter be renewed, nor shall any new license or registration be thereafter issued to or made for such person until he has satisfied any penalty imposed by the court in respect of the offence, or his conviction has been quashed, and until he has given to the Minister proof of his financial responsibility for future motor vehicle accidents in the manner and for the amount required by this Part, but the giving of proof to the Minister of such financial responsibility for future accidents shall not alter or affect in any way any disqualification to hold a license or the suspension or cancellation of a driver's license or the registration of a motor vehicle under any other provisions of this Act.

(2) In any case where a judge, police magistrate or justice of the peace has suspended any license or registration in any order, judgment or conviction it shall not be necessary for the Minister to do so.

Compulsory
suspensions
in case of
extra-
provincial
offences

(3) Upon receipt by the Minister of official notice that a driver licensed, or an owner of a motor vehicle registered under this Act has been convicted or forfeited his bail in any other province or in any state of the United States of America, for an offence which, if committed in this Province would have been a violation of the provisions of the law mentioned in the next preceding subsection of this section, the Minister shall suspend every such license and registration until such person has given proof of financial responsibility in the same manner as if the said conviction had been made or the bail forfeited by a court in the Province.

Suspension
in case of
non-resident

(4) If the person to whom subsection (1) applies is not a resident of the Province, the privilege of driving a motor vehicle in the Province and the privilege of using or having within the Province a motor vehicle owned by him, shall be and become suspended forthwith upon such conviction or forfeiture of bail and shall remain suspended until he has complied with the provisions of subsection (1) by satisfaction of the penalty imposed by the court and furnished proof of financial responsibility for future motor vehicle accidents.

(5) Notwithstanding any of the provisions of this section, in any case where the suspension or cancellation of a license creates undue hardship or injustice, or in any other case, the Minister in his discretion may issue a temporary license or may reinstate any license upon such terms and conditions as he may deem just.

Temporary/
license
issued

[R.S.A. 1942, c. 275, s. 124; 1948, c. 73, s. 9; 1949, c. 104, s. 13.]

124a.—(1) The Minister shall suspend the driver's or chauffeur's license of any person for a period of six months who is convicted for the second time within a period of twelve months, each of which convictions in the opinion of the Minister arose from or in connection with a motor vehicle accident which resulted in bodily injury to or the death of any person or damage to property in an amount exceeding one hundred dollars.

Driver's
license
suspended
after
second
conviction

(2) The Minister shall suspend the driver's or chauffeur's license of any person for a period of twelve months who has been found guilty of operating a motor vehicle while intoxicated contrary to the provisions of section 285 (4) of the Criminal Code of Canada.

Driver's
license
suspended
after
conviction
for driving
while
intoxicated

(3) Every magistrate shall forward to the Minister the driver's or chauffeur's license of any person,

Magistrate
forwards
license to
Minister

(a) who the magistrate convicts of any offence arising from or in connection with a motor vehicle accident which resulted in bodily injury to or the death of any person or damage to property in an amount exceeding one hundred dollars and who has a previous conviction indorsed upon his driver's or chauffeur's license;

(b) who the magistrate finds guilty of operating a motor vehicle while intoxicated contrary to the provisions of section 285 (4) of the Criminal Code of Canada.

[1949, c. 104, s. 14.]

125. The Minister may require proof of financial responsibility before issue of the registration of a motor vehicle or driver's license, or the renewal thereof to any person under the age of twenty-one years or over the age of sixty-five years.

Proof of
financial re-
sponsibility
from minors
and aged
persons

[R.S.A. 1942, c. 275, s. 125.]

126. The Minister may require proof of financial responsibility from any person who, while operating any motor vehicle has been involved in and in the opinion of the Minister is responsible in whole or in part for any motor vehicle accident resulting in the death of or injury to any person or damage to property in excess of one hundred dollars, or from the person in whose name the motor vehicle is registered, or from both, and the Minister may suspend the driver's license and the registration of all motor vehicles of that person until proof of financial responsibility has been given.

Proof of
financial re-
sponsibility
from persons
responsible
for accidents

[R.S.A. 1942, c. 275, s. 126.]



No suspension if proof of financial responsibility furnished

127.—(1) Neither the registration of a motor vehicle nor a driver's license, nor in the case of a person not resident in the Province, the privilege of operating any motor vehicle in the Province, as well as the privilege of operation within the Province of any motor vehicle owned by the non-resident, shall be suspended or withdrawn under the provisions of this Part if the owner, driver or non-resident has voluntarily filed or deposited with the Minister, prior to the offence or accident, out of which any conviction, judgment or order arises, proof of financial responsibility which at the date of the conviction, judgment or order is valid and sufficient for the requirements of this Part.

Duties of Minister

(2) The Minister shall receive and record proof of financial responsibility voluntarily offered, and if any conviction or judgment against such person is thereafter notified to the Minister which, in the absence of such proof of financial responsibility would have caused the suspension of the driver's license or registration of the motor vehicle under this Part, the Minister shall forthwith notify the insurer or surety of such person of the conviction or judgment so reported.

[R.S.A. 1942, c. 275, s. 127.]

Requirements as to proof of financial responsibility

128. Proof of financial responsibility shall be given by every driver, and in the case of an owner, by every owner to whom this Part applies for each motor vehicle registered in his name in the amounts and subject to the limitations, conditions and qualifications prescribed for an owner's and a driver's policy respectively by Part VII of *The Alberta Insurance Act*.

[R.S.A. 1942, c. 275, s. 128.]

Proof of financial responsibility

129.—(1) Proof of financial responsibility may be given in any one of the following forms:

Certificate of authorized insurer

- (a) The written certificate or certificates filed with the Minister of any authorized insurer that it has issued to or for the benefit of the person named therein a motor vehicle liability policy or policies, which at the date of the certificate or certificates is in full force and effect and which designates therein by explicit description or by other adequate reference all motor vehicles to which the policy applies; any such certificate or certificates shall cover all motor vehicles then registered in the name of the person furnishing such proof; and an additional certificate shall be required as a condition precedent to the registration of any additional motor vehicle in the name of such person; the said certificate or certificates shall certify that the motor vehicle liability policy or policies therein mentioned shall not be cancelled or expire, except upon ten days' prior written notice thereof to the Minister, and until such notice is duly given the said certificate or certificates shall be valid and sufficient to cover the term of any renewal of such motor

vehicle liability policy by the insurer or any renewal or extension of the term of the insured's driver's license or registration of this motor vehicle by the Minister; or

- (b) The bond of a guarantee, insurance or surety company duly licensed in the Province pursuant to *The Alberta Insurance Act*, the said bond shall be in form approved by the Minister and shall be conditioned upon the payment of the amounts specified in this Part, and shall not be cancelled or expire except after ten days' written notice to the Minister, but not after the happening of the injury or damage secured by the bond as to such accident, injury or damage, and the said bond shall be filed with the Minister; or

Bond

- (c) The certificate of the Minister that the person named therein has deposited with him a sum of money or securities for money approved by him in the amount or value of eleven thousand dollars for each motor vehicle registered in the name of such person; the Minister shall accept any such deposits and issue a certificate therefor, if such deposit is accompanied by evidence that there are no unsatisfied executions against the depositor registered in the office of the sheriff for the judicial district in which the depositor resides.

Deposit of cash or securities

(2) The Minister may in his discretion at any time require additional proof of financial responsibility to that filed or deposited by any driver or owner pursuant to this Part and may suspend the driver's license and any registration of a motor vehicle of the person from whom proof is required, pending such additional proof.

Additional proof

(3) In the case of an owner of ten or more motor vehicles to whom this Part applies, proof of financial responsibility in a form and in an amount not less than fifty thousand dollars, satisfactory to the Minister, may be accepted as sufficient for the purposes of this Part.

Owner of ten or more motor vehicles

(4) Where a person who is not a resident of the Province is required to give or volunteers proof of financial responsibility under this Part, the Minister may in his discretion accept in place of the certificate provided for in subsection (1) a certificate of insurance in the form approved by the Minister issued by an insurer authorized to transact insurance in the State or Province in which such person resides if the insurer has filed with the Superintendent of Insurance in the form prescribed by him,—

Certificate of insurance with company entitled to do business in state or province in which the insured resides

- (a) a power of attorney authorizing the Superintendent of Insurance to accept service of a notice or process on its behalf in any action or proceeding arising out of a motor vehicle liability policy issued by it;

(b) an undertaking not to set up as a defence to any action or proceeding arising out of a motor vehicle liability policy issued by it, a defence which might not be set up if such policy had been issued in Alberta subject to and in accordance with the law of Alberta relating to motor vehicle liability policies, and to satisfy any judgment rendered against it by a court in Alberta and become final in any such action or proceeding.

Evidence of undertaking

(5) In any action or proceeding against an insurer who has given to the Superintendent of Insurance an undertaking pursuant to paragraph (b) of subsection (4), the plaintiff may give evidence of the undertaking and the same shall for all purposes of the action or proceeding be deemed to be a covenant for valuable consideration made by the insurer with the plaintiff.

[R.S.A. 1942, c. 275, s. 129; 1947, c. 67, s. 3.]

Deposition of securities

130.—(1) The bond filed with the Minister and the money or securities deposited with the Minister shall be held by him in accordance with the provisions of this Part as security for any judgment against the owner or driver filing the bond or making the deposit in any action arising out of damage caused after such filing or deposit by the operation of any motor vehicle.

Availability of securities

(2) Money and securities so deposited with the Minister shall not be subject to any claim or demand, except an execution on a judgment for damages, for personal injuries or death, or injury to property, occurring after the deposit as a result of the operation of a motor vehicle.

Right of judgment creditor to enforce bond

(3) If a judgment to which this Part applies is rendered against the principal named in the bond filed with the Minister and the judgment is not satisfied within fifteen days after it has been rendered, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action on the bond in the name of the Minister against the persons executing the bond.

[R.S.A. 1942, c. 275, s. 130.]

Proof of financial responsibility by owner and relief of chauffeurs and others

131. If the Minister finds that any driver to whom this Part applies was at the time of the offence for which he was convicted employed by the owner of the motor vehicle involved therein as chauffeur or motor vehicle operator, whether or not so designated or is a member of the family or household of the owner, and that there was no motor vehicle registered in the Province in the name of such driver as an owner, then if the owner of the motor vehicle submits to the Minister (who is hereby authorized to accept it) proof of his financial responsibility as provided by this Part, the chauffeur, operator, or other person shall be relieved of the requirement of giving proof of financial responsibility on his own behalf.

[R.S.A. 1942, c. 275, s. 131.]

132.—(1) A judgment debtor to whom this Part applies may on due notice to the judgment creditor apply to the court in which the trial judgment was obtained for the privilege of paying the judgment in instalments, and the court may, in its discretion, so order, fixing the amounts and times of payment of the instalments; and while the judgment debtor is not in default in payment of the instalments, he shall be deemed not in default for the purposes of this Part in payment of the judgment, and upon proof of financial responsibility for future accidents pursuant to this Part, the Minister may restore the driver's license and registration of the judgment debtor but the driver's license and registration shall again be suspended and remain suspended as provided in section 123 if the Minister is satisfied of default made by the judgment debtor in compliance with the terms of the court order.

Payment of
damages by
instalments
under order
of court and
restoration
of license

(2) Where the Provincial Treasurer has paid from the Unsatisfied Judgment Fund the amount of a judgment or the balance owing thereon under the provisions of *The Motor Vehicle Accident Indemnity Act* the judgment debtor shall give due notice to the Superintendent of Insurance of any application to the court under the provisions of subsection (1) for the privilege of paying the judgment in instalments to the Provincial Treasurer, and the Superintendent of Insurance and the Provincial Treasurer may appear personally or by counsel and may be heard on any such application.

Notice of
Application

[R.S.A. 1942, c. 275, s. 132; 1949, c. 104, s. 15.]

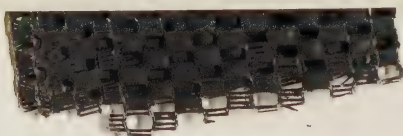
133.—(1) It shall be the duty of the clerk or registrar of the court (or of the court where there is no clerk or registrar) in which any final order, judgment or conviction to which this Part applies is rendered to forward to the Minister immediately after the date upon which the order, judgment or conviction becomes final by affirmation upon appeal, or by expiry without appeal of the time allowed for appeal, a certified copy of the order, judgment or conviction or a certificate thereof in form prescribed by the Minister; and the copy or certificate shall be *prima facie* evidence of the order, judgment or conviction; and the clerk or other official charged with this duty of reporting to the Minister shall be entitled to collect and receive a fee of one dollar for each copy or certificate hereby required, which fee shall be paid as part of the court costs in case of a conviction by the person convicted, and in case of an order or judgment, by the person for whose benefit judgment is issued.

Reports to
be made by
clerks or
registrars
of courts

(2) If the defendant is not resident in the Province of Alberta, it shall be the duty of the Minister to transmit to the registrar of motor vehicles or other officer or officers, if any, in charge of the registration of motor vehicles and the licensing of operators in the province or state in which the defendant resides, a certificate of the said order, judgment or conviction.

Reports by
Minister
as to non-
residents

[R.S.A. 1942, c. 275, s. 133.]



Reports by
Minister
to insurers

134.—(1) The Minister shall upon request furnish to any insurer, surety or other person a certified abstract of the operating record of any person subject to the provisions of this Part which abstract shall fully designate the motor vehicles, if any, registered in the name of such person, and the record of any conviction of such person for a violation of any provision of any statute relating to the operation of motor vehicles or any judgment against such person for any injury or damage caused by him, according to the records of the Minister, and if there is no record of any such conviction or judgment in the office of the Minister, the Minister shall so certify; and the Minister shall collect as a fee for each such certificate the sum of one dollar.

Reports by
Minister to
claimants
of damages

(2) The Minister, upon written request, shall furnish any person who may have been injured in person or property by any motor vehicle, with all information of record in his office pertaining to the proof of financial responsibility of any owner or driver or any motor vehicle furnished pursuant to this Part. [R.S.A. 1942, c. 275, s. 134.]

Return of
license and
registration
plates

135.—(1) Any owner or driver whose registration or license has been suspended as herein provided or whose policy of insurance or surety bond has been cancelled or terminated as herein provided or who neglects to furnish additional proof of financial responsibility upon the request of the Minister as herein provided shall immediately return to the Minister his driver's license and all license plates issued upon the registration of his motor vehicle.

Power of
re-capture
by police
officer

(2) If any such person fails to return his license, and plates as provided herein, the Minister may direct any police officer to secure possession thereof and return the same to the office of the Minister.

Failure to
return
license, etc.,
an offence

(3) Any person failing to return his license, and plates when so required, or refusing to deliver the same when requested to do so by the police officer, shall be guilty of an offence and liable to a penalty of not less than ten dollars and not more than one hundred dollars for each offence.

[R.S.A. 1942, c. 275, s. 135.]

Transfer of
registration
upon
suspension

136. If the registration of a motor vehicle has been suspended under the provisions of this Part such registration shall not be transferred nor the motor vehicle in respect of which such permit was issued registered in any other name until the Minister is satisfied that the transfer or registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this Part.

[R.S.A. 1942, c. 275, s. 136.]

Cancellation
of bonds and
return of
securities by
Minister

137.—(1) The Minister may cancel any bond or return any certificate of insurance or may return any money or security deposited pursuant to this Part as proof of finan-

cial responsibility at any time after three years from the date of the original deposit thereof:

Provided that the owner or driver on whose behalf such proof was given has not, during the said period or any three-year period immediately preceding the request, been convicted of any offence against any of the provisions of this Act:

Provided further that no action for damages is pending and no judgment is outstanding and unsatisfied in respect of personal injury or damage to property in excess of one hundred dollars resulting from the operation of a motor vehicle.

(2) A statutory declaration of the applicant under this section shall be sufficient evidence of the facts in the absence of evidence to the contrary in the records of the Minister.

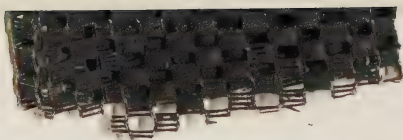
(3) The Minister may direct the return of any bond, money or securities to the person who furnished the same upon the acceptance and substitution of other adequate proof of financial responsibility pursuant to this Part.

Substitution
of securities

(4) The Minister may direct the return of any bond, money or securities deposited under this Part to the person who furnished the same at any time after three years from the date of the expiration or surrender of the last registration made of a motor vehicle to that person or of the driver's license issued to that person if no written notice has been received by the Minister within that period of any action brought against such person in respect of the ownership, maintenance or operation of a motor vehicle, and upon the filing by such person with the Minister of a statutory declaration that he no longer resides in the Province, or that he has made a *bona fide* sale of any and all motor vehicles owned by him, naming the purchaser thereof, and that he does not intend to own or operate any motor vehicle in the Province within a period of at least one year.

Prerequisites
to return of
bond or
securities

[R.S.A. 1942, c. 275, s. 137.]



REGULATIONS UNDER THE VEHICLES AND HIGHWAY TRAFFIC ACT

Order in Council, 108-43, dated January 26th, 1943,
Alberta Gazette, February 15th, 1943

1. The owner of every motor vehicle and every person who drives, operates or uses on any highway a motor vehicle, shall observe and comply with these Regulations, and every other person to whom any of the Regulations may apply shall observe and comply with them.

Number Plates

2. All motor vehicles which have heretofore been required by The Vehicles and Highway Traffic Act, 1941, as amended, to display two number plates shall until the thirty-first day of March, 1944, be required to display but one number plate which,—

(a) in the case of a motor vehicle other than a motor cycle shall be displayed at the rear of such motor vehicle and firmly attached so that the lower edge thereof shall not be lower than the axle, and—

(b) in the case of a motor cycle the number plate shall be at the rear thereof in such position that the lower edge of the plate shall be firmly attached to the rear mudguard in such position as to be clearly visible.

Provided that the provisions of this regulation shall not apply to number plates issued for the period ending March 31, 1943.

Note: (Order in Council 295-46, dated February 12th, 1946, authorized use of one plate for the licensing years 1945-46 and 1946-47, The Alberta Gazette, February 28th, 1946).

SIGNALS

3. Before turning, stopping or changing the course on the highway of any motor vehicle, and before turning such vehicle after starting the same, the operator shall first ascertain that there is sufficient space for such movement to be made in safety, and the operator shall give a signal plainly visible to the operators of other vehicles of his intention to turn, stop or change his course in the following manner:

(a) Signals by means of the hand and arm shall be given from the left side of the vehicle.

(b) An intention to turn to the left shall be indicated by extending the hand and arm horizontally from and beyond the left side of the vehicle, as shown in Illustration No. 1 hereunder.

(c) An intention to turn to the right shall be indicated by extending the hand and arm upward and beyond the left side of the vehicle as shown in Illustration No. 2 hereunder.

(d) An intention to stop or to make a sudden decrease in speed shall be indicated by extending the hand and arm downward and beyond the left side of the vehicle as shown in Illustration No. 3 hereunder.



No. 1

No. 2

No. 3

LEFT TURN

RIGHT TURN

STOP OR SLOW



The Man Behind Can't Read Your Mind. SIGNAL!

Lights, Tail Lights and Reflectors

4. (a) No motor vehicle shall be stationary on any highway outside the corporate limits of any city, town or village unless it has either a lit tail lamp or a reflector attached to the left of the rear end thereof, so fixed as to reflect the lights of any motor vehicle approaching the stationary vehicle from the rear;

(b) No vehicle other than a motor vehicle or bicycle shall be upon any highway whether in motion or stationary unless there is displayed thereon at least one light visible at a distance of at least one hundred feet from the front of and behind that vehicle, or in the alternative, there is attached thereto one reflector at the front thereof, so fixed as to reflect the lights of any motor vehicle approaching from the front and one reflector at the rear thereof so fixed as to reflect the lights of any motor vehicle approaching from the rear;

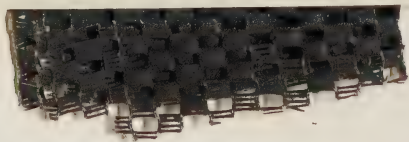
(c) No vehicle drawn by or attached to a motor vehicle, commonly known as a trailer, shall be upon any highway unless it has attached at the rear thereof a reflector, so fixed as to reflect the lights of any motor vehicle approaching from the rear.

(d) Every bicycle with, or without, motor attachment shall when on a public highway during the period one hour after sunset and one hour before sunrise, carry a lighted lamp, visible at least one hundred feet in the direction towards which the bicycle is proceeding, and shall also carry a lighted lamp or reflector exhibiting to the rear, a red light plainly visible so as to reflect the lights of any motor vehicle approaching from the rear.

5. The requirements of these regulations shall be deemed to have been complied with and approved in the case of reflectors of the type hereinafter described, namely:

(a) Reflectors built into tail lights in such manner as to be adequately protected from moisture and dust, and, so constructed, that under normal atmospheric conditions at night, the same will give a red reflection to the light from the headlights of a motor vehicle, at least two hundred feet distant, if either of those headlights is within two degrees of a line projected at right angles to the plane of the reflector, and from the centre thereof; or

(b) Reflectors consisting of a circular lens of glass, not less than two and three-quarter inches in diameter backed by a reflecting



material, mounted in a substantial metal case so that the reflecting material is adequately protected from moisture and dust, and so constructed, that under normal atmospheric conditions at night, the reflector will give a red reflection to the headlights of a motor vehicle at least two hundred feet distant, if either of those two headlights is within two degrees of a line projected at right angles to the plane of the reflector, and from the centre thereof.

A. PASSENGER MOTOR VEHICLES
SCHEDULE OF REGISTRATION FEES

Length of Wheelbase in inches	April 1st Fee	40	75
		Per Cent Reduction Oct. 1st	Per Cent Reduction Jan. 1st
For motor vehicles not exceeding 100 inches	\$10.00	\$ 6.00	\$ 2.50
Exceeding 100 inches but not over 105 inches	12.50	7.50	3.15
Exceeding 105 inches but not over 110 inches	15.00	9.00	3.75
Exceeding 110 inches but not over 115 inches	20.00	12.00	5.00
Exceeding 115 inches but not over 120 inches	25.00	15.00	6.25
Exceeding 120 inches but not over 125 inches	27.50	16.50	6.90
Exceeding 125 inches but not over 130 inches	30.00	18.00	7.50
Exceeding 130 inches but not over 135 inches	32.50	19.50	8.15
For every motor vehicle exceeding 135 inches	35.00	21.00	8.75

B. In the case of passenger motor vehicles designated as the year's model and dating ten years previous to the commencement date of the license year in which such motor vehicle is required to be registered, the fees for the registration of licensing thereof under The Vehicles and Highway Traffic Act, according to the length of the wheelbase in inches shall be as follows:

	April 1st Fee	Oct. 1st Fee	Jan. 1st Fee
Not exceeding 100 inches	\$ 8.00	\$ 4.00	\$ 2.00
Not exceeding 105 inches	10.00	5.00	2.50
Not exceeding 110 inches	12.00	6.00	3.00
Exceeding 110 inches	15.00	7.50	3.75

(O.C. 717-44, May 16th, 1944, from *The Alberta Gazette*, May 31st, 1944.)

Motor Cycle	\$5.00	} O.C. 1599-36, dated November 25th, 1936, <i>The Alberta Gazette</i> , November 30th, 1936.
Bicycle pedal with motor attachment	2.00	
Scooter	3.00	} O.C. 399-40, April 2nd, 1940, <i>The Alberta Gazette</i> , April 15th, 1940.



THE PUBLIC SERVICE VEHICLES ACT

(OFFICE CONSOLIDATION)

(Being Chapter 276 of the Revised Statutes of Alberta, 1942, and amendments up to and including 1947)

HIS MAJESTY, by and with the advice and consent of
The Legislative Assembly of the Province of Alberta,
enacts as follows:

Short Title.

- 1.** This Act may be cited as "*The Public Service Vehicles Act*." Short title
[1936, c. 91, s. 1.]

Interpretation.

- 2.** In this Act, unless the context otherwise requires,—
- (a) "Board" means the Highway Traffic Board constituted pursuant to this Act; Interpre-
tation
Board
 - (b) "Certificate" means a document issued by the Highway Traffic Board granting authority to operate a public service or commercial vehicle; Certificate
 - (c) "Commercial vehicle" means any truck, trailer or semi-trailer, except,— Commercial
vehicle
 - (i) a truck, trailer or semi-trailer which is a public service vehicle; or
 - (ii) a truck, trailer or semi-trailer or any class or classes thereof, which the Board after an examination of the circumstances certifies in any year is not to be regulated as a commercial vehicle in that year;

and includes any motor vehicle from which sales are made of any goods, wares, merchandise or commodity, and any motor vehicle by means of which delivery is made of any goods, wares, merchandise or commodity to any purchaser or consignee thereof;
 - (d) "Compensation" means remuneration in specie or otherwise or any other recompense whatsoever obtained for transporting passengers, live stock, liquids, goods, merchandise, gravel, sand or other material; Compensa-
tion
 - (e) "Live stock" means poultry and domestic animals including horses, cattle, sheep and pigs; Live stock
 - (f) "Minister" means the Minister of Public Works; Minister
 - (g) "Motor vehicle" includes automobiles, locomobiles, motor cycles and other self-propelled vehicles excepting cars of electric and steam railways and other motor vehicles running only upon rails or tracks or solely upon railway company property; Motor
vehicle

Owner	(h) "Owner" means a person in whose name a vehicle is registered under <i>The Vehicles and Highway Traffic Act</i> ;
Public highway	(i) "Public highway" means every highway, road allowance, thoroughfare, road, street, avenue, lane, alley, trail, park, drive, parkway, driveway, square, bridge, culvert or place in the Province in respect of which there is a public right of travel;
Public service vehicle	(j) "Public service vehicle" means a motor vehicle, trailer or semi-trailer operated on a public highway by or on behalf of any person, firm, association or corporation for compensation, whether such operation is regular or only occasional or for a single trip; and includes a motor vehicle kept by a person, firm or corporation for the purpose of being rented without a driver but does not include a motor vehicle used solely as an ambulance or hearse or for the transportation of His Majesty's mail; and also includes any motor vehicle operated by or on behalf of any person engaged in the business of processing cream or milk or dairy products and which is capable of being used for the purpose of transporting cream or milk or dairy products;
Semi-trailer	(k) "Semi-trailer" means a vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle;
Toll or rate	(l) "Toll" or "rate" means a fee charged or collected for the carriage of passengers or property by a public service vehicle;
Trailer	(m) "Trailer" means any vehicle which is at any time drawn upon a public highway by a motor vehicle and which is intended for the conveyance of live stock, liquids, goods, merchandise, gravel, sand or other materials, and shall be deemed to be a separate vehicle and not part of the motor vehicle by which it is drawn;
Truck	(n) "Truck" means a motor vehicle intended for the conveyance of live stock, liquids, goods, merchandise, gravel, sand or other material.

[1938, c. 69, s. 2; 1939, c. 73, s. 2.]

Certificate Required.

3.—(1) No person by himself or by an agent or employee shall operate a public service or commercial vehicle unless he holds a certificate or permit issued by the Board authorizing such operation:

Provided, however, that the provisions of this subsection shall not apply to the operation of a motor vehicle by the owner, his agent or employee, upon property privately owned or leased by the owner of the motor vehicle.

(2) No person other than the holder of a public service vehicle certificate shall, by advertising or otherwise solicit the transportation of passengers, live stock, liquids, goods, merchandise, gravel, sand or other material and no advertisement containing such solicitation shall be inserted in any newspaper published in the Province. Advertising transportation

(3) No person other than the holder of a public service vehicle certificate shall operate a travel bureau or any other place for the sale of tickets or for soliciting or advertising the sale of tickets for the transportation of persons on highways outside of a city, town or village, except under the authority of a special certificate issued by the Board. Travel bureau

[1936, c. 91, s. 3; 1941, c. 86, s. 2.]

Highway Traffic Board.

4.—(1) There shall be a board styled "The Highway Traffic Board" which shall be composed of three members to be appointed by the Lieutenant Governor in Council, one of whom shall be appointed as chairman and shall be entitled to hold the position of chairman as long as he continues a member of the Board; if a person who is employed in the public service of the Province is appointed as a member of the Board, he shall nevertheless be deemed to continue to be an employee within the meaning of *The Public Service Act* and to be subject to its provisions and entitled to the benefits thereby conferred. Constitution of Highway Traffic Board

(2) In case of the absence of any member of the Board or his inability to act or in case of a vacancy in the office the two remaining members shall concur in exercising the powers of the Board. Vacancy on Board

(3) In the absence of the chairman all orders, rules, regulations and other documents may be signed by any one member and when so signed shall have the like effect as if signed by the chairman; whenever it appears that a member other than the chairman has acted for and in place of the chairman it shall be conclusively presumed that he has so acted in the absence or disability of the chairman. Absence of chairman

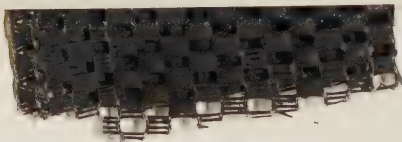
(4) Vacancies caused by death, resignation or otherwise may be filled by the Lieutenant Governor in Council but a vacancy shall not impair the power of the remaining members to act, and in any such case the signature of one member shall be sufficient. Filling vacancies

(5) The members shall serve without remuneration or shall receive such remuneration as is approved by the Lieutenant Governor in Council and shall perform such duties in addition to the duties assigned to them by this Act as may be provided by the Lieutenant Governor in Council. Remuneration

[1936, c. 91, s. 4.]

5. The Board shall be a body corporate with perpetual succession and a common seal of such design as may be provided by the Lieutenant Governor in Council, and the seal shall be judicially noticed. The Board a body corporate

[1936, c. 91, s. 5.]



Member disqualified from acting in a matter

6. Whenever a member is interested in a matter before the Board, the Lieutenant Governor in Council may, upon the application of such member or otherwise, appoint some disinterested person to act as a member for that particular matter, and the Lieutenant Governor in Council may also appoint a person to act during the sickness, absence or disability of a member. [1936, c. 91, s. 6.]

Powers of the Board.

Powers of Board to prohibit operation of public service vehicles without special permits

7.—(1) The Board, with the approval of the Lieutenant Governor in Council, may by order from time to time,—

- (a) prohibit the operation of any public service vehicle along any highway, highways or parts thereof specified in the order, by any person who is not the holder of a special permit authorizing him so to do;
- (b) prohibit the operation of any public service vehicle in any area consisting of unsurveyed lands specified in the order by any person who is not the holder of a special permit authorizing him so to do;
- (c) provide for the issuance of special permits referred to in paragraphs (a) and (b), the person or persons to whom the same are to be issued, the duration thereof and the fees payable upon the issuance of any such permit or any classification thereof.

Approval of tolls by the Board

(2) The tolls which shall be charged by the holder of any special permit issued under this section in respect of the operation of a public service vehicle over any designated highway or in any specified area, as the case may be, shall be such tolls as are from time to time approved by the Board and not otherwise.

(3) Every person who,—

- (a) operates any public service vehicle in contravention of any order made pursuant to this section; or
- (b) being the holder of a special permit issued pursuant to this section makes charges on account of tolls for the operation of a public service vehicle to which the permit relates, other than such tolls as are for the time being approved by the Board as the tolls to be charged for the operation of the vehicle; or
- (c) by means of any rebate, discount, forbearance or other device, discriminates as between one person and any other person in the charges made in respect of the operation of the public service vehicle to which the permit relates,—

shall in every such case be guilty of an offence and liable upon summary conviction to a fine of not more than two hundred dollars and costs, and in addition to any other penalty imposed, the Board may in its discretion cancel any special permit issued under this section to the person convicted. [1938, c. 69, s. 4.]

7a. All the powers, duties and functions vested in and imposed upon the Minister by section 76 of *The Vehicles and Highway Traffic Act* which shall be deemed to include the granting of the temporary permits provided for in section 20 of the said Act, shall be exercised, performed and administered by the Board. [1944, c. 67, s. 1.]

Certain powers, duties and functions vested in Minister transferred to Board

8.—(1) Notwithstanding the provisions of any other Act the Board may make regulations limiting or restricting the weight, speed, width of wheels and the use of cleats, in respect of any or all traction engines or public service vehicles or commercial vehicles upon highways; and relating to the maximum weight and load to be carried by any vehicle upon highways, the size and nature of tires to be used upon such vehicles and the dimensions of any vehicles or combination of vehicles upon highways.

Regulations by Board as to traction engines and public service vehicles

(2) Upon such regulations being approved by the Lieutenant Governor in Council they shall be of the same effect as if set out in this Act. [1938, c. 69, s. 5.]

9. The Board may, with the approval of the Lieutenant Governor in Council, make regulations not inconsistent with this Act for the better carrying out of the provisions of this Act according to their true intent. [1936, c. 91, s. 10.]

General regulations

10. The chairman shall perform such of the duties and exercise such of the powers of the Board as are imposed upon or delegated to him from time to time by the Board. [1936, c. 91, s. 9.]

Duties of chairman

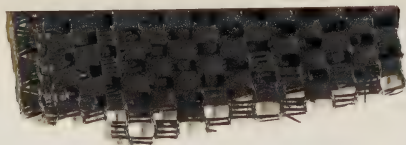
11. The Board shall make provision for keeping an accurate record of its business. [1936, c. 91, s. 7.]

Records

12.—(1) The Board shall have power to do all things necessary for the proper conduct of its business and in particular, but without restricting the generality of the foregoing, may make regulations or orders governing,—

Regulations and orders of Board as to particular matters

- (a) the amount and nature of any deposit, bonds and insurance policy required to be deposited by the owner of a public service vehicle;
- (b) the nature of live stock, liquids, goods and merchandise which may be carried;
- (c) routes and the nature of routes whether local or through;
- (d) areas within which public service vehicles may be operated;
- (e) the passenger capacity of public service vehicles;
- (f) the weight which may be carried on the top of a passenger carrying public service vehicle;
- (g) the maximum weight of express freight and baggage which public service vehicles may carry, and the size and weight of packages;
- (h) tolls, express and freight rates;



- (i) the commission chargeable for collecting on cash on delivery shipments;
- (j) the licensing, supervision, maintenance and location of depots and the furnishing of insurance or other security by any licensee against the loss of property in transit or in his custody, as a condition prerequisite to the issue of a license to him;
- (k) the time schedules of public service vehicles operated on a specified route;
- (l) the classification of vehicles;
- (m) the hours of employment and wages of drivers of public service and commercial vehicles;
- (n) providing for a uniform bill of lading;
- (o) providing for the issue of numbered tickets by owners of passenger carrying public service vehicles operated on a specified route;
- (p) classifying live stock, goods, merchandise and other material;
- (q) respecting the nature of goods which may be carried as express freight;
- (r) respecting the nature of containers which may be used in freight shipments;
- (s) prescribing the form of certificates and permits to be issued by the Board and the period in respect of which any certificate or permit is issued and the fees to be paid therefor;
- (t) the restriction as to the use of public service and commercial vehicles;
- (u) the speed and equipment of public service and commercial vehicles;
- (v) the operation of motor vehicles owned or operated by clubs, societies or in partnership;
- (w) rules adapted to assure the safety of persons lawfully using the highway;
- (x) rules adapted to insure the carrying out of the intention of this Act.

[1936, c. 91, s. 8; 1938, c. 69, s. 3; 1941, c. 86, s. 3; 1942, c. 60, s. 2.]

Inspectors
and traffic
officers

13. The Board may appoint such inspectors and traffic officers as are deemed necessary for the purpose of aiding in the enforcement of this Act.

[1936, c. 91, s. 11.]

Prescription
of routes
for public
service
vehicles

14. The Board may prescribe a route as the only route over which a public service vehicle may be operated between specified points and include in any route so prescribed any highway in any city, town or village, and may prescribe or limit or restrict the service to be furnished by the vehicle at any specified point or between any specified points upon any route so prescribed.

[1936, c. 91, s. 12.]

15. The Board may require the filing of returns, reports and other data by holders of certificates and permits and regulate and supervise such persons in all matters affecting the relationship between them and the public.

Returns by
certificate
holders

[1936, c. 91, s. 13.]

16. Where sittings of the Board or of any member thereof are appointed to be held in a city, town or village in which there is a hall belonging to the corporation, the council shall upon request allow the sittings to be held in the hall.

Use of
municipal
halls for
sessions of
Board

[1936, c. 91, s. 14.]

Issue of Certificates.

17.—(1) Application for a certificate shall be made to the Board in such form and in such manner as the Board may require and shall be accompanied by the prescribed fee.

Applications
for certifi-
cates

(2) Any person may, before securing a license under *The Vehicles and Highway Traffic Act*, make application for a certificate, but before a certificate is issued the Board shall require such person to produce his motor vehicle license.

*The Vehicles
and High-
way Traffic
Act*

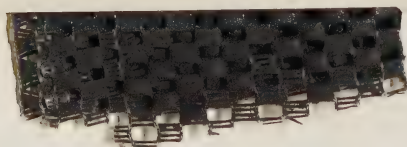
[1936, c. 91, s. 15.]

18.—(1) No certificate for a public service vehicle shall be issued unless the applicant has filed with the Board evidence satisfactory to it that the applicant has complied with the provisions of *The Workmen's Compensation Act*.

Prerequisites
for issuance
of certifi-
cates

(2) No certificate for a public service vehicle shall be issued unless the applicant has filed with the Board such of the following insurance policies as may be required by the Board,—

- (a) a motor vehicle liability policy to provide for any loss or damage resulting from bodily injury to or the death of any person being carried in or upon, or entering or getting onto, or alighting from a motor vehicle, having due regard to the number of passengers, and for loss or damage to personal property or passengers carried in or upon the motor vehicle;
- (b) a motor vehicle liability policy to provide for any loss or damage resulting from bodily injury to or the death of any person other than those mentioned in the immediately preceding paragraph;
- (c) a policy of inland transportation insurance against loss of or damage to goods, wares or merchandise or property of any kind in transit or in the custody of the transporter;
- (d) a motor vehicle liability policy to provide for any loss or damage to any property other than that mentioned in paragraphs (a) and (c);
- (e) a policy of guarantee insurance covering the payment to the consignor of all sums collected by the transporter on behalf of the consignor, and the



payment of all fees or charges under this Act, and for the faithful performance of all conditions contained or referred to in the certificate issued under this Act.

Recovery by
consignor

(3) Any consignor who is entitled to recover from a transporter any sum the payment whereof is guaranteed by virtue of any policy of guarantee insurance referred to in subsection (2) shall, notwithstanding that he is not a party to the policy, be entitled to recover the sum from the guarantor party to the policy and for that purpose to bring and maintain against the guarantor an action in any court of competent civil jurisdiction in the Province and to obtain judgment thereon, and the right of any consignor to recover any such sum or to bring and maintain any such action shall not be prejudiced by reason of any,—

(a) assignment, waiver, surrender, cancellation or discharge of the policy, or of any interest therein, made by the transporter after the happening of the event giving rise to a claim under the policy; and

(b) violation of *The Criminal Code* or of any law or statute of any province, state or country, by the transporter or his employers or agents.

[1936, c. 91, s. 16; 1938, c. 69, s. 6; 1942, c. 60, s. 3.]

Powers of
Board as to
applications
for public
service
vehicle
certificates

19. The Board shall consider all applications for public service vehicle certificates and in so doing,—

(a) may appoint or direct any person to make an inquiry and report on any application, complaint, dispute or other matter before the Board in connection with any application for a certificate;

(b) may hold a public hearing with respect to any application or applications where the Board in its sole discretion considers it proper, advisable or expedient so to do, and in any such case the Board shall give to all applicants interested such notice of the hearing as the Board may deem proper and reasonable. [1938, c. 69, s. 7; 1947, c. 68, s. 1.]

Granting or
refusing
application
for
certificate
Issue of
certificate

20.—(1) The Board, after considering an application for any certificate, may in its sole discretion grant or refuse the application.

(2) The Board may, upon payment of the prescribed fee, issue a certificate to the applicant.

Setting out
routes on
certificate

(3) In any case where the Board grants a certificate for the operation of a public service vehicle on a specified route or routes only, the certificate shall set out the route or routes over which the vehicle can be operated.

[1936, c. 91, s. 18; 1947, c. 68, s. 2.]

Contents of
public
service
vehicle
certificates

21. A public service vehicle certificate shall state the maximum number of passengers or tonnage and the nature of live stock, liquids, goods and merchandise which each

vehicle may carry, and no such vehicle shall at any time carry more passengers or a greater tonnage than the number or tonnage specified in the certificate, or any kind of live stock, liquids, goods or merchandise other than as stated thereon except under the authority of a special certificate issued by the Board. [1936, c. 91, s. 19.]

22. No public service vehicle certificate shall be deemed to confer exclusive rights upon any person or to preclude the Board in any way from granting such other public service vehicle certificates as it in its discretion may deem expedient and proper. [1936, c. 91, s. 20; 1947, c. 68, s. 3.]

No exclusive rights conferred by public service vehicle certificate

23. The Board's decision or order on any application, whether the decision is made after or without a public hearing, shall be final, provided that if new evidence is submitted to it within thirty days after the decision the Board may reconsider the application and may rescind, vary or affirm the decision or order previously made. [1936, c. 91, s. 21; 1947, c. 68, s. 4.]

Finality of Board's decision

Suspension, Cancellation, Renewal and Transfer of Certificates.

24.—(1) The Board may for cause suspend and, after at least ten days' notice to the holder of a certificate granting to him an opportunity to be heard, revoke, alter or amend the certificate.

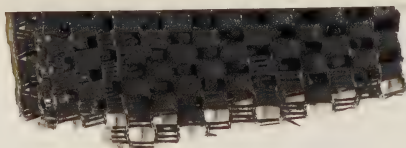
Suspension, etc., of certificate

(2) If in the opinion of the Board the holder of a public service vehicle certificate has not given convenient, efficient and sufficient service, the Board shall allow him reasonable time, not less than ten days, to provide such service before cancelling or revoking his certificate or granting a certificate to some other owner for the operation over the same route.

(3) The Board may in its discretion suspend either for a specified period or indefinitely or may cancel any certificate and any special permit issued pursuant to any of the provisions of this Act upon being satisfied that the person to whom the certificate or permit has been issued, either by himself or by his agents or employees has contravened any of the provisions of *The Fuel Oil Licensing Act* or of any regulations made pursuant to that Act. [1936, c. 91, s. 22; 1939, c. 73, s. 3.]

24a.—(1) Whenever any person who is the holder of a chauffeur's license issued pursuant to section 20 of *The Vehicles and Highway Traffic Act*, is convicted of an offence against any of the provisions of this Act or of any regulation or order made thereunder, the convicting judge, police magistrate or justice of the peace may suspend for a specified period, or may cancel, the chauffeur's license or the certificate issued by the Board with respect to the public service vehicle driven by the chauffeur, or both.

Cancellation of chauffeur's license



Cancellation
of
certificate

(2) Where any person who is the holder of a certificate is convicted of an offence against any of the provisions of this Act or any regulation or order made thereunder, the convicting judge, police magistrate or justice of the peace may suspend for a specified period or may cancel the said certificate.

[1947, c. 68, s. 5.]

Non-user
of public
service
vehicle cer-
tificate and
cancellation
thereof

25. Unless exercised within a period of thirty days from the issuance thereof or within such further period as the Board may on application allow, the authority conferred by a public service vehicle certificate shall cease and terminate and the certificate shall be deemed to be cancelled.

[1936, c. 91, s. 23.]

Expiration
of
certificate

26.—(1) Every public service vehicle certificate shall expire and the rights conferred thereby shall cease and terminate on the thirty-first day of March in each and every year.

New
certificate
issued each
year

(2) Prior to the first day of February in each year, or such later date as the Board may allow, any person who holds a public service vehicle certificate and wishes to obtain a certificate for the next ensuing year beginning on the first day of April, shall make application to the Board for a new certificate, which application shall be accompanied by the prescribed fee.

(3) The Board shall consider all such applications for public service vehicle certificates, and shall deal with them in the manner set out in sections 19 and 20.

(4) If any such application is refused the applicant shall not operate a public service vehicle after the expiration of the certificate which he then holds.

[1936, c. 91, s. 24; 1938, c. 69, s. 8; 1947, c. 68, s. 6.]

Sale, assign-
ment, etc.,
of certifi-
cates and
permits

27.—(1) No certificate or permit or right or privilege thereunder shall be capitalized, sold, assigned, leased or transferred except with the previous written approval of the Board.

(2) When the holder of a public service vehicle certificate sells, transfers or assigns his business rights and assets he may, with the approval of the Board, transfer the certificate to the purchaser, which approval shall be indorsed on the certificate, and the certificate so indorsed shall be as effective as if originally issued to the purchaser; and where, by reason of the purchase, there is a consolidation of certificates and where, in the opinion of the Board, a through service will be beneficial to the public, the Board may authorize such service.

[1936, c. 91, s. 25.]

Special Permits.

Permits for
special trip
for public
service
vehicle

28.—(1) An owner of a public service vehicle desiring to operate the vehicle for a single trip outside the limits of the route or area covered by his certificate for the convey-

ance of passengers, live stock, liquids, goods, merchandise or other material may do so upon obtaining from the Board a permit and paying the prescribed fee.

(2) A non-resident who has complied with the law of his place of residence as to the registration of motor vehicles and who desires to operate a motor vehicle or trailer for a single trip for the conveyance of passengers, live stock, liquids, goods, merchandise or other material may do so upon obtaining from the Board a permit and paying such fee as may be determined by the Board.

Non-resident operators

(3) Notwithstanding anything contained in this Act, the holder of a public service vehicle certificate or his employee may make an emergency trip whether or not the trip is over a route or part of a route or within an area covered by his certificate, and if a permit cannot be obtained before the trip is commenced, he shall deliver or mail notice thereof to the Board within twenty-four hours after the completion of the trip, and shall, upon demand, pay to the Board the prescribed fee; in case the trip is covered by a certificate held by another person the authority conferred by the foregoing provision shall not be exercised unless the holder of the certificate will not undertake the trip. [1936, c. 91, s. 26.]

Emergency trips

Prohibitions.

29.—(1) No driver or operator of any vehicle used for passenger transportation on a specified route shall refuse to carry any person offering himself at a regular stopping place for carriage and who tenders the regular fare to any regular stopping place on the route of the vehicle or between the termini thereof unless at the time of the offer the seats of the vehicle are fully occupied, but the driver or operator may refuse transportation to any person who is in an intoxicated condition or is conducting himself in a boisterous or disorderly manner or using profane or obscene language.

Duty of driver or operator of vehicle used for passenger transportation—

as to carriage of passengers

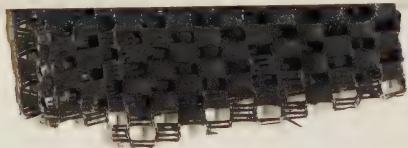
(2) No driver or operator of a public service vehicle shall refuse to carry the commodities stated in the owner's certificate if the same are offered in proper condition unless at the time of the offer the vehicle is loaded to capacity or owing to climatic conditions the property is liable to perish in transit. [1936, c. 91, s. 28.]

as to carriage of goods

30.—(1) No driver or operator of a public service vehicle used for passenger traffic shall allow passengers to ride on the running board, fenders or any part of the vehicle other than the seats thereof.

Prohibited practices

(2) No driver or operator of a public service vehicle used for passenger traffic shall transport a greater number of persons than the seats of the vehicle are designed to carry; this subsection shall not apply to buses operated solely within the limits of a city.



(3) No passenger shall be allowed to sit on the front seat to the left of the driver of a left-hand drive vehicle or to the right of the driver of a right-hand drive vehicle.

(4) No person who for the time being has the control of or is in charge of a public service vehicle used for passenger traffic shall allow any person other than a duly licensed chauffeur to operate the vehicle except in cases of emergency when the moving of the vehicle is necessary for the safety of the vehicle or the public.

[1936, c. 91, s. 29; 1939, c. 73, s. 4.]

Persons prohibited from carrying passengers in body of truck in which cargo is carried except as stated

31. Except with the permission of the Board, no person shall carry or permit to be carried upon the body of any truck which is operated as a public service or commercial vehicle and in which any cargo is being carried, any passengers save and except one person who is or may be required for the care, handling or disposal of the cargo.

[1938, c. 69, s. 10; 1947, c. 68, s. 7.]

Carriage of baggage on vehicle used for passenger transportation

32. No public service vehicle used for the carriage of passengers shall carry or transport any luggage, baggage, package, trunk, crate or other load which extends beyond the running board of the vehicle.

[1936, c. 91, s. 31.]

Use of trailers with vehicles used for passenger transportation

33. Except when specially authorized by the Board, public service vehicles used for the transportation of passengers shall not be operated or driven with any trailer attached thereto.

[1936, c. 91, s. 32.]

Equipment and Safety Precautions.

Safety and sanitation

34. Every public service vehicle shall be maintained in a safe and sanitary condition and shall be at all times subject to the inspection of the Board or its duly authorized representatives or a police officer or police constable.

[1936, c. 91, s. 33.]

Fire extinguishers

35. Every public service vehicle, except any public service vehicle trailer or except any public service vehicle or any class or classes of public service vehicles which may be exempted by the Board, shall be equipped with a liquid fire extinguisher of a design or type approved by the Board, and such extinguisher shall at all times be kept in a satisfactory operative condition.

[1936, c. 91, s. 34; 1941, c. 86, s. 4; 1943, c. 35, s. 1.]

Interior lighting

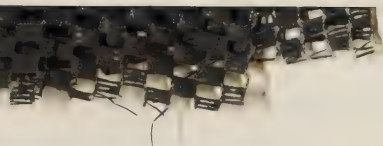
36. Every closed public service vehicle used for the transportation of passengers shall maintain a light or lights of not less than two candle power each within the vehicle so arranged as to light up the whole of the interior.

[1936, c. 91, s. 35.]

Speedometer

37. Every public service vehicle or commercial vehicle except a trailer or semi-trailer shall be equipped with a standard speedometer which shall be maintained in good working order.

[1936, c. 91, s. 36.]



38.—(1) Every public service vehicle, except any public service vehicle or except any class or classes of public service vehicles which may be exempted by the Board, shall be equipped with at least one extra serviceable tire and the equipment necessary for changing and inflating tires. Spare tire equipment

(2) Every public service vehicle when being operated on an earth road shall be equipped with tire chains.

[1936, c. 91, s. 37; 1941, c. 86, s. 5; 1943, c. 35, s. 2.]

39.—(1) The Board may issue distinctive number plates to be displayed on the front and rear of public service and commercial vehicles except trailers, and in the case of a trailer may issue a distinctive number plate which shall be displayed on the rear thereof. Number plates for vehicles and trailers

(2) If the number plate or plates or one of the number plates is lost or destroyed the owner shall forthwith apply to the Board for a new plate or a new set of plates, returning the remaining plate, if any, and accompanying his application with an affidavit that the original plate or plates or one of them has been lost or destroyed and he shall, upon payment of the prescribed fee, receive a new plate or plates.

(3) Upon the issuance of a license for a public service vehicle, the Board shall issue to the person licensed in respect thereof, one plate designating the gross carrying capacity of the vehicle, and the plate shall at all times be displayed on the left side of the vehicle in such position as may be designated by the Board.

[1936, c. 91, s. 38; 1938, c. 69, s. 11.]

40. No person shall be licensed as the driver of any public service or commercial vehicle unless he has satisfied the Board that he is physically fit, and the Board may from time to time require any person who has been so licensed to submit to it evidence as to his physical condition. Drivers' licenses

[1936, c. 91, s. 39.]

41.—(1) No driver of a public service or commercial vehicle shall drink intoxicating liquor while on duty. Use of intoxicants by driver

(2) No driver of a public service vehicle shall smoke tobacco in any form or manner whilst driving a public service vehicle in which passengers are being carried. Smoking by driver of public service vehicle

[1936, c. 91, s. 40.]

42. The driver of a public service or commercial vehicle, on approaching a level railway crossing, shall bring his vehicle to a stop at a distance of not less than fifteen feet, and not more than fifty feet from the nearest rail before traversing the crossing, and shall not proceed until he is satisfied that it is safe to do so. Stopping at rail crossings

[1936, c. 91, s. 41.]

Fees.

43.—(1) The Board may, with the approval of the Lieutenant Governor in Council, from time to time by order Board may prescribe fees



prescribe the fees and other sums payable to the Board pursuant to any of the provisions of this Act.

(2) Every such order shall be published in *The Alberta Gazette*, and shall take effect upon the date of the publication or at such later date as may be named therein for that purpose. [1939, c. 73, s. 5.]

Basis for
fees

44.—(1) The fees payable in respect of any certificate or permit may be based upon or fixed by reference to all or some or any of the matters following, namely,—

- (a) the gross receipts from the operation of a public service vehicle or a commercial vehicle during the period for which the certificate or permit is issued;
- (b) the passenger carrying capacity of a public service vehicle;
- (c) the express freight carrying capacity of a public service vehicle;
- (d) the mileage of any public service vehicle during the period for which the certificate or permit is issued;
- (e) the carrying capacity of any commercial vehicle;
- (f) the mileage of any commercial vehicle during the period for which the certificate or permit is issued; and
- (g) any other circumstance, matter or thing.

(2) Vehicles of the same general class may be sub-classified having regard to the class of roads or different classes of roads over which the same are to be operated, and different fees may be fixed for different subclasses of such vehicles. [1936, c. 91, s. 43.]

Powers of
Board on
failure to
pay fees,
etc.

45. Upon failure to pay any fee, charge or percentage of gross earnings imposed by or under the authority of this Act, the Board may in its discretion make a claim under the policy referred to in paragraph (c) of subsection (2) of section 18 or revoke the certificate issued to the person in default. [1936, c. 91, s. 44.]

Limitation

46. Notwithstanding anything contained in this or any other Act, any fee or charge payable under this Act or the regulations hereunder may be recovered within a period of three years from the date of default in payment.

[1936, c. 91, s. 45.]

Deposit of
fees, etc.,
in General
Revenue
Fund

47. All fees and other moneys collected under this Act shall be deposited in the General Revenue Fund.

[1936, c. 91, s. 46.]

General Provisions.

Expenses
of Board

48. The expenses of the Board shall be paid out of such sums as may be appropriated by the Legislature for the purpose. [1936, c. 91, s. 47.]

49.—(1) All vehicles while in operation on chartered trips shall have exposed on the front thereof a sign marked "chartered" and, unless the trip is undertaken under the authority of subsection (3) of section 28, the driver shall have the permit in his possession and shall produce it on demand.

Signs, etc.,
upon
vehicles

(2) A truck operated as a public service vehicle shall have painted on each side in legible letters the owner's name and if operated on a specified route, the terminal points thereof.

(3) In or on each public service vehicle and on the premises of the owner there shall be prominently displayed the schedule of times and tolls or rates approved by the Board.

(4) The sign and particulars referred to in subsections (1) and (2) shall at all times be kept well painted, clean and legible.

[1936, c. 91, s. 48.]

50.—(1) Every person owning or operating a public service vehicle for the transportation of freight shall use the form of bill of lading prescribed by the Board; such bill of lading shall accompany each shipment.

Prescribed
bill of lading

(2) Every person owning or operating a public service vehicle for the transportation of express freight over a specified route shall use the form of express receipt prescribed by the Board, and the express receipt shall accompany each shipment.

Prescribed
express
receipt

(3) Every person owning or operating a public service vehicle for the transportation of passengers over a specified route shall use only tickets approved by the Board.

Passenger
tickets

(4) The Board may exempt from the requirements of subsections (1) and (2) the owner or operator of any vehicle used exclusively for the conveyance of farm or dairy products or live stock and, if deemed advisable, the owner or operator of any other vehicle used in any other class of operation.

Exemptions

[1936, c. 91, s. 49.]

51. Every holder of a certificate issued under this Act who operates a public service vehicle over a specified route or routes shall, in so far as road conditions permit, operate in accordance with the approved schedule of arrival and departure from each point.

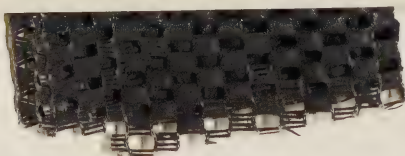
Operation
of public
service
vehicles over
prescribed
route

[1936, c. 91, s. 50.]

52.—(1) No holder of a public service vehicle certificate shall without the authority of the Board, abandon or discontinue any service established thereunder except as provided in subsection (3) or in the regulations.

Maintenance
of service
by holder
of public
service
vehicle
certificate

(2) Subject to the provisions of subsection (1), if the holder of a certificate abandons or discontinues in whole or in part any service established by virtue thereof without the authority of the Board, the certificate may be cancelled by the Board.



Powers of Board

(3) The Board may, at any time, or from time to time, on the request of the Minister,—

- (a) close any part of any highway to any class or classes of traffic;
- (b) limit or restrict the load to be transported over any part of any highway; and
- (c) limit or restrict the speed of any class or classes of motor vehicles on any part of any highway.

[1936, c. 91, s. 51; 1941, c. 86, s. 6; 1942, c. 60, s. 4.]

Licenses of drivers

53. No holder of a certificate shall employ any driver or operator who is not in possession of a chauffeur's license as required by *The Vehicles and Highway Traffic Act*.

[1936, c. 91, s. 52.]

Reports as to dismissal of drivers

54. Every owner of a public service vehicle who dismisses a driver or operator shall report the dismissal to the Board forthwith giving the reason therefor.

[1936, c. 91, s. 53.]

Records by owners of public service vehicles

55.—(1) Every owner of a public service vehicle operated over a specified route or within a stated area shall keep an accurate account of his business, and his books, accounts and all other records shall at all times during business hours be open to inspection of the Board or its appointed representative.

(2) Every owner of a public service vehicle operated over a specified route or within a stated area shall on demand file with the Board a sworn statement on a form prescribed by the Board containing such information as it may require respecting the operations of the owner.

[1936, c. 91, s. 54.]

Non-application of certain provisions in certain cases

56. Subsection (1) of section 18 and sections 36 and 57 shall not apply to the owner of a public service vehicle whose principal business, in the opinion of the Board, is the operation of a taxi or dray service within the limits of a city, town or village.

[1936, c. 91, s. 55; 1938, c. 69, s. 12.]

Reports of accidents causing death or personal injury

57. Every owner shall within forty-eight hours report to the Board in full detail any accident causing the death of any person or injury to any person or property, other than that of the owner, arising from and in connection with his operations, and the Board, if it deems necessary, may hold an investigation.

[1936, c. 91, s. 56.]

Restriction of use of certificate and plates

58. No person shall permit the use of his certificate or number plates on any motor vehicle other than that for which they were issued.

[1936, c. 91, s. 57.]

Defacement of certificates, etc.

59. No person shall deface or alter any certificate, number plate or schedule of times, tolls or rates.

[1936, c. 91, s. 58.]

60.—(1) Any inspector, traffic officer, peace officer or constable may, without warrant, seize any motor vehicle, trailer or semi-trailer which, in his opinion, is being operated in violation of this Act or the regulations or orders made hereunder, and may retain the same in his custody until the proper fees and charges are paid, or in case any information is laid within seven days of the date of the seizure, until the case is judicially disposed of.

Seizure of vehicles operated in violation of this Act

(2) Any person who by himself, or by an agent or employee, operates a motor vehicle for compensation without having a certificate issued by the Board authorizing him so to do, shall be guilty of an offence and liable on summary conviction for a first offence to a penalty of not less than ten dollars and costs; for a second offence to a penalty of not less than twenty-five dollars and costs; and for a third offence to a penalty of not less than fifty dollars and costs in addition to the impounding of the vehicle for a period of not less than ninety days. [1941, c. 86, s. 7.]

Operation of motor vehicle for compensation without a certificate an offence

61.—(1) No city, town, village, municipal district or improvement district shall impose any fee or charge in respect of a public service vehicle upon any person who holds a public service vehicle certificate under this Act except a business tax in cases where the certificate holder maintains an office, or a property tax in the case of a city which is authorized to impose such a tax.

Municipal powers of taxation

(2) Subsection (1) shall not apply to a certificate holder the major portion of whose revenue is secured from the operation of a taxi or dray service within the limits of a city, town or village. [1936, c. 91, s. 60.]

62. Where an owner desires to operate a public service vehicle interprovincially, the Board may in lieu of the policies required under the provisions of this Act accept those which have been deposited with the officials of another province and shall, before issuing a certificate, take up all matters pertaining to such interprovincial operation with the officials of the province concerned. [1936, c. 91, s. 61.]

Inter-provincial operators of public service vehicles

63. All regulations made under this Act shall be published in *The Alberta Gazette* and shall take effect upon the date of publication unless some other date is specified in the regulations. [1936, c. 91, s. 62.]

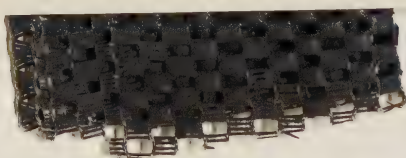
Publication of regulations

64. The Board shall submit annually to the Legislative Assembly a statement of the number of certificates and permits issued under the provisions of this Act during the previous year and the total revenue collected. [1936, c. 91, s. 63.]

Statements for Legislature

65.—(1) Where a certificate or permit confers the right to operate a vehicle over a public highway or any portion thereof or within a stated area, every person who operates a vehicle on the public highway or within the stated area

Operation of vehicle in prejudice of rights under certificate or permit an offence;



penalty in such manner as to prejudice the rights granted by the certificate or permit shall be guilty of an offence and liable on summary conviction in case of a first offence to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment for not more than six months and, in case of a subsequent offence, to a fine of not less than fifty dollars nor more than two hundred and fifty dollars or to imprisonment for not more than two years or to both fine and imprisonment.

Offence and
penalty

(1a) Any person who operates a motor vehicle on a part of a highway where the speed is limited or restricted pursuant to paragraph (c) of subsection (3) of section 52, at a speed in excess of the speed so limited or restricted for that part of the highway, shall be guilty of an offence and liable on summary conviction for a first offence to a fine of not less than twenty-five dollars and not exceeding fifty dollars and in default of payment of the fine to a term of imprisonment not exceeding thirty days, and for a subsequent offence to a fine of not less than fifty dollars and not exceeding one hundred dollars and in default of payment to imprisonment for a period not exceeding sixty days.

General
penalty
clause

(2) Every person who violates any of the provisions of this Act or the regulations or orders made hereunder for which no other penalty is provided, shall be guilty of an offence and liable on summary conviction for a first offence to a fine or not more than ten dollars; for a second offence to a fine of not less than twenty dollars and not exceeding thirty-five dollars; for a third offence to a fine of not less than thirty-five dollars and not exceeding fifty dollars; and for every subsequent offence to a fine of not less than fifty dollars, and in default of payment to imprisonment for a period not exceeding three years.

Liability
of owner
unless proof
given

(3) The owner of a public service vehicle or a commercial vehicle for which a certificate has been issued under the provisions of this Act, shall be liable for a violation of any of the provisions thereof or of the regulations made hereunder in connection with the operation of the public service vehicle or commercial vehicle unless the owner proves to the satisfaction of the justice of the peace or police magistrate trying the case that at the time of the offence the public service vehicle or commercial vehicle was not being driven by him nor by any other person with his consent, express or implied.

[1936, c. 91, s. 64; 1938, c. 69, s. 13; 1941, c. 86, s. 8; 1943, c. 35, s. 3; 1947, c. 68, s. 8.]

Liveryman's
license

66.—(1) No person shall carry on the business of a liveryman until he has applied for and received from the Board a liveryman's license, which may be issued upon payment of such fees and compliance with such other conditions as may be prescribed by the Board, including a condition that all vehicles used by the liveryman in his business shall be insured by an insurance of such amount and covering such risks as the Board may prescribe.

(2) The license of any liveryman who fails to keep his vehicles insured as is required by the previous subsection, or to comply with any other conditions prescribed by the Board, may be cancelled or suspended for such time as may seem proper to the Board. [1938, c. 69, s. 14.]

67.—(1) In this section “mayor” includes any person for the time being authorized by the mayor in writing to discharge any of the powers and duties conferred upon him by this section. Mayor

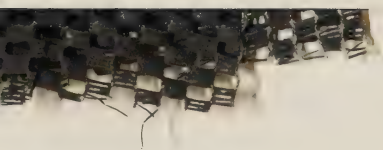
(2) No liveryman who carries on business as such in any city or town shall employ any person as a chauffeur of a passenger vehicle unless such person is the holder of a permit in writing authorizing him to act as a chauffeur as aforesaid, issued by the mayor of the city or town, as the case may be; and the issuing of the permit shall be in the discretion of the mayor. Liverymen carrying on business in cities and towns
Employee to hold permit

(3) The mayor may cancel any permit issued by him pursuant to this section at any time. Cancellation of permit

(4) Every liveryman who carries on business as such in any city or town shall, not later than the third day of each month, deliver to the mayor of the city or town a list of all chauffeurs employed by him in the driving of his passenger vehicles. List of chauffeurs

(5) Every liveryman who carries on business as such in any city or town, who employs any person as the chauffeur of a passenger vehicle who is not the holder of a valid and subsisting permit issued pursuant to this section, or who continues to employ any person as the chauffeur of a passenger vehicle after being notified that such person's permit has been cancelled shall be guilty of an offence and liable on summary conviction to a fine of not less than twenty dollars nor more than one hundred dollars and costs, and in default of payment to imprisonment for a period of not more than six months. Employment in breach of section an offence;
penalty

(6) Any person who carries on business as a liveryman without a valid and subsisting liveryman's license under this Act shall be guilty of an offence and liable on summary conviction to a fine of not less than twenty dollars, nor more than one hundred dollars and costs, and in default of payment to imprisonment for a period of not more than six months. [1938, c. 69, s. 14.] Necessity for liveryman's license





1948

CHAPTER 74.

An Act to amend The Public Service Vehicles Act.

(Assented to March 31, 1948.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Public Service Vehicles Act*, being chapter 276 of the Revised Statutes of Alberta, 1942, is hereby amended by adding immediately after section 8 thereof the following new section:

"8a.—(1) In any case where the council of any municipal district is of the opinion that it is necessary for the preservation of any district highway, local road, or portion thereof within its jurisdiction it may by resolution,—

New section
8a

"(a) prohibit the use of such district highway, local road, or portion thereof, by any traction engine, public service vehicle or commercial vehicle or by any class or classes thereof for such period or periods as the council may determine;

Powers of council of municipal district as to closing municipal highways, limiting speed, etc., under certain circumstances

"(b) limit or restrict the speed of any traction engine, public service vehicle, commercial vehicle or of any class or classes thereof using such district highway, local road, or portion thereof, for such period or periods as the council may determine;

"(c) limit or restrict the weight and load to be carried by any traction engine, public service vehicle or commercial vehicle using such district highway, local road, or portion thereof, for such period or periods as the council may determine.

"(2) The council shall cause to be erected such signs along the said district highway, local road, or portion thereof as the council deems necessary to notify any person using the same of the prohibition, limitation or restriction imposed by the said resolution.

Erection of signs on district highway, etc.

"(3) Any person who violates any such prohibition, limitation or restriction imposed by the said resolution and published by the signs erected as aforesaid shall be guilty of an offence and liable on summary conviction to a penalty of not less than ten dollars and not more than twenty-five dollars."

Offence and penalty

2. The said Act is further amended as to section 12 by adding immediately after paragraph (m) of subsection (1) thereof the following new paragraph:

Section 12 amended

“(mm) the installation, use and inspection of meters in any vehicle used by a liveryman in his business;”.

New section
62a

3. The said Act is further amended by adding immediately after section 62 thereof the following new section:

Board may
enter into
reciprocal
agreement
with govern-
ment of
another
province for
certain
purposes

“**62a.**—(1) The Board may, with the approval of the Lieutenant Governor in Council enter into a reciprocal arrangement or agreement with the government of any other province exempting, or partially exempting, or giving privileges or concessions to any class or classes of owners or drivers of public service vehicles or commercial vehicles who are ordinarily resident in that other province, in respect of the application of the provisions of this Act to their operations in this Province and providing for the granting by that other province of similar exemptions, privileges or concessions to owners or drivers of such vehicles who are ordinarily resident in this Province in respect of their operations in that other province.

Compliance
with law of
place of
residence
necessary to
obtain
privileges

“(2) No person shall be entitled to any exemption, privilege or concession under any such arrangement or agreement unless he has first complied with the law of his place of residence and carries or produces such evidence thereof including licenses, certificates and number plates as may be prescribed by the law of that place, and unless he has complied with all conditions and restrictions set out in the arrangement or agreement.

Cancellation
of agreement
by order in
council

“(3) The Lieutenant Governor in Council may by order cancel any such arrangement or agreement and thereupon the same shall be null and void and have no further force or effect.”.

Coming into
force of Act

4. This Act shall come into force on the day upon which it is assented to.



1949

CHAPTER 84.

An Act to amend The Public Service Vehicles Act.

(Assented to March 20, 1949.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Public Service Vehicles Act*, being chapter 276 of the Revised Statutes of Alberta, 1942, is hereby amended as to section 31 by striking out the same and by substituting the following: Section 31 amended

"31.—(1) No person shall carry any passenger or permit any passenger to be carried in or upon any truck which is operated as a public service or commercial vehicle, except,— Prohibition of carrying passengers

"(a) in cases of emergency;

"(b) with the permission in writing of the Board;

"(c) members of the family of the owner of the vehicle;

"(d) one person who is or may be required for the care, handling or disposal of the cargo.

"(2) No person shall ride in the body of any truck in which cargo is being carried and no person shall permit any passenger to ride in the body of any truck in which cargo is being carried, except,—

"(a) in cases of emergency; or

"(b) with the permission in writing of the Board."

2. This Act shall come into force on the day upon which it is assented to. Coming into force

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GOVERNMENT OF THE PROVINCE OF ALBERTA
THE HIGHWAY TRAFFIC BOARD

Application for Public Service or Commercial Vehicle License

IMPORTANT! ALL QUESTIONS MUST BE ANSWERED FULLY

Pursuant to the provisions of The Public Service Vehicles Act, application is hereby made to operate a motor vehicle in accordance with the following statements:

Operations will be confined within the boundaries of the city of _____

or

Operations will be confined to the city of _____ and within a radius of five (5) miles therefrom.

or

Operations will be confined to the town or village of _____ and within a radius of five (5) miles therefrom.

or

Operations will not wholly be confined to any particular area _____ Yes. No.

Will this truck accept shipment for compensation? (P.S.V.) _____ Yes. No.

(All shipments for compensation with the following exemptions—grain, fodder, coal, cordwood, lumber, railway ties, clay, brick, sand, stone or gravel—must be covered by cargo and fidelity bond insurance and such insurance policies must be deposited with The Highway Traffic Board.)

(P. S. V. Applicants must also complete Form H.T.B. 51.)

Will this truck be used solely for the transportation of your own goods (C.V.) in connection with your business of _____? Yes. No.

Will this truck be used solely in connection with your own farming operations _____? Yes. No.

If so, state location of farm _____ Sec. _____ Tp. _____ Rge. _____ W. _____ th M. No. of Acres. _____

List commodities to be carried _____

Make _____	Year _____	License No. _____
Serial No. _____	Engine No. _____	
Manufacturers' rated capacity _____	Weight of Vehicle, box and cab _____	Fee \$ _____
Colour _____	Wheelbase _____ inches	Fee \$ _____
Tire Sizes: Front _____ Rear _____ Max. wt. _____		Total \$ _____

Head Office Use Only

E: Application for C.V. or P.S.V. license must be accompanied by _____ weigh slip.

le; Truck, semi-trailer, trailer, tractor, automobile.

: Tank, van, box, stake, flat.

Master File

Name _____ (PRINT IN BLOCK LETTERS)

(SIGNATURE OF OWNER)

Address _____

CLASSIFICATION OF PLATES

	FEES
C. (a) Cities only -----	Registration fee
(b) Towns, villages and 5-mile radius -----	Registration fee
F. Farm truck, in connection with own farming operations only -----	Registration fee
G. Government trucks: Federal, Provincial, Municipal -----	\$1.00
SV. School vans. Solely for conveyance of school children -----	\$2.00
U. Urban. Cities and 5-mile radius -----	Fees upon request
X. (a) Three-quarter ton or less trucks used by the mechanics transportation of tools -----	Registration fee plus \$1.00
(b) Half-ton trucks for private or pleasure purposes and not for conveyance of goods -----	Registration fee plus \$1.00
CV. Conveyance of own goods within the Province in connection with owner's business other than that of farming -----	Registration fee plus freight fee
PSV. Conveyance of goods for compensation within the Province -----	Registration fee plus freight fee

REGISTRATION FEES:	Length of wheelbase in inches,—	Converted p'ssg'r. cars 1928 models or prior
	For motor vehicles not exceeding 100 inches.....	\$10.00 \$ 8.00
	Exceeding 100 inches but not over 105 inches.....	12.50 10.50
	Exceeding 105 inches but not over 110 inches.....	15.00 13.00
	Exceeding 110 inches but not over 115 inches.....	20.00 15.50
	Exceeding 115 inches but not over 120 inches.....	25.00 18.00
	Exceeding 120 inches but not over 125 inches.....	27.50 21.00
	Exceeding 125 inches but not over 130 inches.....	30.00 24.00
	Exceeding 130 inches but not over 135 inches.....	32.50
	For every motor vehicle exceeding 135 inches.....	35.00

FREIGHT FEES:	(Note: Gross weight is obtained by the addition of manufacturers rated carrying capacity and weight of vehicle box and cab.)	P.S.V.	C.V.
(P S and C V licenses)	Gross weight not exceeding 3,000 lbs.	\$ 25.00	\$ 12.50
	Exceeding 3,000 lbs. but not exceeding 4,000 lbs.....	30.00	15.00
	Exceeding 4,000 lbs. but not exceeding 5,000 lbs.....	35.00	25.00
	Exceeding 5,000 lbs. but not exceeding 6,000 lbs.....	40.00	35.00
	Exceeding 6,000 lbs. but not exceeding 7,000 lbs.....	45.00	45.00
	Exceeding 7,000 lbs. but not exceeding 8,000 lbs.....	55.00	55.00
	Exceeding 8,000 lbs. but not exceeding 9,000 lbs.....	65.00	65.00
	Exceeding 9,000 lbs. but not exceeding 10,000 lbs.....	75.00	75.00
	Exceeding 10,000 lbs. but not exceeding 11,000 lbs.....	90.00	90.00
	Exceeding 11,000 lbs. but not exceeding 12,000 lbs.....	105.00	105.00
	Exceeding 12,000 lbs. but not exceeding 13,000 lbs.....	120.00	120.00
	Exceeding 13,000 lbs. but not exceeding 14,000 lbs.....	135.00	135.00
	Exceeding 14,000 lbs. but not exceeding 15,000 lbs.....	150.00	150.00
	Exceeding 15,000 lbs. but not exceeding 16,000 lbs.....	170.00	170.00
	Exceeding 16,000 lbs. but not exceeding 17,000 lbs.....	190.00	190.00
	Exceeding 17,000 lbs. but not exceeding 18,000 lbs.....	210.00	210.00
	Exceeding 18,000 lbs. but not exceeding 19,000 lbs.....	230.00	230.00
	Exceeding 19,000 lbs. but not exceeding 20,000 lbs.....	250.00	250.00
	Exceeding 20,000 lbs. but not exceeding 21,000 lbs.....	270.00	270.00
	Exceeding 21,000 lbs. but not exceeding 22,000 lbs.....	290.00	290.00
	Exceeding 22,000 lbs. but not exceeding 23,000 lbs.....	310.00	310.00
	Exceeding 23,000 lbs. but not exceeding 24,000 lbs.....	330.00	330.00
	Exceeding 24,000 lbs.	350.00	350.00

THESE FEES
IN ADDITION
TO REGISTRATION
FEES SHOWN
ABOVE:

949 - 1950

Classification and
Registration No.

ee Paid \$

CV 000000

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD
LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT, to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

NOTE

Certificate is not to be transferred without authority. Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless
imposed by issuing
in space below
plate number
ted

Make
YearSerial No.
Engine No.Mfrs. Chap'y.
WeightM.F. No.
W'base.

FORD 10000001
1949

6000 00000
8100 159

MR. JOHN DOE
EDMONTON,
ALTA.

Front Tires.

Rear Tires.

Max. Weight.

Body.

825-20D

20000

This Certificate expires March 31, 1950,
unless otherwise cancelled by the Board.

C. H. H. WORKMAN,
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

Trans. Cert. No.

License No.

M.F. No.

Reg'n. Fee

Freight Fee

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck--Same Owner

W.B. Fee

Freight Fee

Make

Year

Serial

Engine

Mfr's. Cap'y

Weight

Tires: Front

Wheelbase

Rear

Max. Weight

Insurance

Type of Truck

Commodities

License No.

Location of Farm

To New Owner--Same Truck

We hereby give notice of change

of ownership of above vehicle and license. Fee \$1.00.

FROM

TO

(Purchaser) (Block Letters)

(Vendor's Signature)

Purchaser's Signature)

(Address)

(Address)

Date

19

949 - 1950

Classification and
Registration No.

PS 00000

Paid \$

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD
LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been
registered under the provisions of THE VEHICLES AND HIGHWAY
TRAFFIC ACT, and that the owner has been granted permission,
pursuant to the provisions of THE PUBLIC SERVICE VEHICLES
ACT, to operate the said vehicle in accordance with the regulations of
the Highway Traffic Board governing the classification as designed by
the letter shown above.

If licensed as a Public Service Vehicle for application to goods ex-
empted from cargo insurance, the following, for which cargo insurance
bond has been filed, may be transported:

**EXEMPTED GOODS (grain, fodder, coal,
cordwood, lumber, railway ties, sand,
stone, gravel, clay, brick).**

NOTE Certificate is not to be transferred without authority.
Certificate must be framed with proper protection and
carried in cab of vehicle.

Not valid unless
issued by issuing
agency in space below
plate number
and.

Make
YearMake No.
Registration No.Make, Type,
WeightMake No.
WeightFORD 10000001
19496000 00000
8100 159MR. JOHN DOE
EDMONTON,
ALTA.

Front Tires.

Rear Tires.

Max. Weight.

Body.

825-20D

20000

This Certificate expires March 31, 1950,
unless otherwise extended by the Board.

G. H. N. MONTGOMERY
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

License No.

M.F. No.

Reg'n. Fee.

Trans. Cert. No. Freight Fee

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck—Same Owner W.T. Fee Freight Fee

Make Year

Serial Engine

Mfr's Cap'y Weight

Tires Front Wheelbase

Rear Max. Weight

Insurance Type of Truck

Commodities License No.

Location of Farm

To New Owner—Same Truck We hereby give notice of change
of ownership of above vehicle and license Fee \$1.00

FROM

TO

.....

(Purchaser) (Block Letters)

.....

(Vendor's Signature)

(Purchaser's Signature)

.....

(Address)

(Address)

Date 19

949 - 1950

Classification and
Registration No.*B 00000*

Fee Paid \$

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD

LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT, to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

PETROLEUM PRODUCTS IN TANKS

NOTE

Certificate is not to be transferred without authority. Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless stamped by issuing office in space below and plate number stated.

Make Year	Serial No. Engine No.	Mfrs. Wgt. WT.	M.P. No. License
FORD 1949	10000001	6000 8100	00000 159

MR JOHN DOE,
EDMONTON,
ALTA.

Front Tires. Rear Tires. Max. Weight. Body.

825-20D 20000

This Certificate expires March 31, 1950,
unless otherwise cancelled by the Board

G. H. M. MONKMAN,
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

License No.

M.R. No.

Reg'n. Fee

Trans. Cert. No. Freight Fee

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck—Same Owner W.B. Fee Freight Fee

Make Year

Serial Engine

Mfr's Cap'y Weight

Tires: Front Wheelbase

Rear Max. Weight

Insurance Type of Truck

Commodities License No.

Location of Farm

To New Owner—Same Truck We hereby give notice of change
of ownership of above vehicle and license—Fee \$1.00.

FROM

TO

(Vendor's Signature)

(Purchaser's Block Letters)

(Purchaser's Signature)

(Address)

(Address)

Date 19.....

949 - 1950

Classification and
Registration No.

Paid \$

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD

LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT), to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

Milk, Cream, poultry and farm products

NOTE

Certificate is not to be transferred without authority.
Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless
implied by issuing
license in space below
plate number
entered.

Make Year	Serial No. Engine No.	Mfrs. Cap y. Weight	M.F. No. W. Class
--------------	--------------------------	------------------------	----------------------

FORD	10000001	6000	00000
1949		8100	159

MR JOHN DOE,
EDMONTON,
ALTA.

Front Tires.	Rear Tires.	Max. Weight.	Body.
--------------	-------------	--------------	-------

825-20D 20000

This Certificate expires May 31, 1950,
unless otherwise cancelled by the Board.

G. H. N. MONKMAN,
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

Trans Cert No.

License No.

M.F. No.

Reg'n. Fee

Freight Fee

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck—Same Owner.

W.B. Fee

Freight Fee

Make

Year

Serial

Engine

Mtr's. Cap'y

Weight

Tires: Front

Wheelbase

Rear

Max. Weight

Insurance

Type of Truck

Commodities

License No.

Location of Farm

To New Owner—Same Truck.

We hereby give notice of change

of ownership of above vehicle and license. Fee \$1.00.

FROM

TO

(Purchaser) (Block Letters)

(Vendor's Signature)

(Purchaser's Signature)

(Address)

(Address)

Date

19

1949 - 1950

Classification and
Registration No.

Fee Paid \$

7500000

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD

LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, (pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT), to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

MILK AND CREAM

NOTE

Certificate is not to be transferred without authority. Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless
implied by issuing
license in space below
d plate number
listed.

Make
YearSerial No.
Engine No.Max. Cap'ty.
WeightAlt. No.
LicenseFORD 10000001
19496000 00000
8100 159MR. JOHN DOE
EDMONTON,
ALTA.

Front Tires.

Rear Tires.

Max. Weight.

Body.

825-20D

20000

This Certificate expires March 31, 1950,
unless otherwise cancelled by the Board.

G. H. N. MONEMAN,
Chairman

(Transfer Form on reverse side)

949 - 1950

Classification and
Registration No.*PS 50000 d*

ee Paid \$

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD

LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT, to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

PROPANE GAS**NOTE**

Certificate is not to be transferred without authority.
Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless
imposed by issuing
re in space below
plate number
ted.

Make Year	Serial No. Engine No.	Miles. Cap'y Weight	M. P. No. W.
FORD	10000001	6000	00000
1949		8100	159

MR JOHN DOE,
EDMONTON,
ALTA.

Front Tires Rear Tires 225-200 20000

This Certificate expires March 31, 1950,
unless otherwise cancelled by the Board.

G. H. N. MONKMAN,
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

License No.....

M.F. No.....

Reg'n. Fee

Trans. Cert. No..... Freight Fee

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck—Same Owner..... W.B. Fee Freight Fee

Make Year

Serial Engine

Mfr's. Cap'y Weight

Tires: Front Wheelbase

Rear Max. Weight

Insurance Type of Truck

Commodities License No.

Location of Farm

To New Owner—Same Truck..... We hereby give notice of change
of ownership of above vehicle and license. Fee \$1.00.

FROM

.....

.....
(Vendor's Signature)

.....
(Address)

TO

.....
(Purchaser) (Block Letters)

.....
(Purchaser's Signature)

.....
(Address)

Date 19

949 - 1950

Classification and
Registration No.

PS 000000

Paid \$

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD

LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT, to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

CRUDE OIL

NOTE

Certificate is not to be transferred without authority. Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless
imposed by issuing
in space below
plate number
ted.

Make Year	Serial No. Engine No.	Mfrs. Cap'y. Weight	M.F. No. Wholes.
FORD 1949	10000001	6000 8100	00000 159

MR JOHN DOE,
EDMONTON,
ALTA.

Front Tires.	Rear Tires.	Max. Weight.	Body.
		325-20D 20000	

This Certificate expires March 31, 1950,
unless otherwise cancelled by the Board.

G. H. N. MONKMAN,
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

Trans. Cert. No.....

License No.....

M.F. No.....

Reg'n. Fee.....

Freight Fee

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck—Same Owner. W.B. Fee Freight Fee.

MakeYear

SerialEngine

M'fr's. Cap'yWeight

Tires: FrontWheelbase

RearMax. Weight

InsuranceType of Truck

CommoditiesLicense No.

Location of Farm

To New Owner—Same Truck. We hereby give notice of change
of ownership of above vehicle and license. Fee \$1 00.

FROM

TO

(Purchaser) (Block Letters)

(Vendor's Signature)

(Purchaser's Signature)

(Address)

(Address)

Date..... 19.....

949 - 1950

Classification and
Registration No.

ee Paid \$

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD

LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT, to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

PETROLEUM PRODUCTS

NOTE

Certificate is not to be transferred without authority. Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless
issued by issuing
office in space below
al plate number
sted.

Make
YearSerial No.
Chassis No.Mfrs. cap'y.
WeightM. F. No.
W. baseFORD 10000001
19496000 00000
8100 159MR. JOHN DOE
EDMONTON,
ALTA.

Front Tires.

Rear Tires.

Max. Weight.

Body.

825-20D

20000

This Certificate expires March 31, 1950,
unless otherwise cancelled by the Board.

G. H. N. MONKMAN,
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

License No.

M.F. No.

Reg'n. Fee

Trans. Cert. No. Freight Fee

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck—Same Owner. W.B. Fee Freight Fee

Make Year

Serial Engine

Mfr's Cap'y Weight

Tires Front Wheelbase

Rear Max. Weight

Insurance Type of Truck

Commodities License No.

Location of Farm

To New Owner—Same Truck. We hereby give notice of change
of ownership of above vehicle and license. Fee \$1.00

FROM

TO

(Purchaser) (Block Letters)

(Vendor's Signature)

(Purchaser's Signature)

(Address)

(Address)

Date 19.....

1949 - 1950

Classification and
Registration No.

Fee Paid \$

PS 000000

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD
LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, (pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT), to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

GENERAL MERCHANDISE

NOTE

Certificate is not to be transferred without authority.
Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless
stamped by issuing
office in space below
and plate number
indicated.

Make Year	Serial No. Engine No.	Mfrs. Cap'y. Weight	M.P. No. or License
FORD 1949	10000001	6000 8100	00000 159

MR JOHN DOE,
EDMONTON,
ALTA.

Front Tire. Rear Tire. Max. Weight. (Capacity)
325-20D 20000

This Certificate expires March 31, 1950,
unless otherwise cancelled by the Board.

G. H. N. MONTGOMERY,
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

Trans. Cert. No.....

License No.....

M.F. No.....

Reg'n. Fee

Freight Fee

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck—Same Owner.

W.B. Fee

Freight Fee

Make

Year

Serial

Engine

Mfr's. Cap'y

Weight

Tires: Front

Wheelbase

Rear

Max. Weight

Insurance

Type of Truck

Commodities

License No.

Location of Farm

To New Owner—Same Truck.

We hereby give notice of change

of ownership of above vehicle and license. Fee \$1 00.

FROM

TO

(Vendor's Signature)

(Purchaser's Signature)

(Address)

(Address)

Date

19.....

1949 - 1950

Classification and
Registration No.

Fee Paid \$

B 000000

GOVERNMENT OF THE PROVINCE OF ALBERTA
HIGHWAY TRAFFIC BOARD
LICENSE REGISTRATION CERTIFICATE

This is to certify, that the motor vehicle described herein, has been registered under the provisions of THE VEHICLES AND HIGHWAY TRAFFIC ACT, and that the owner has been granted permission, pursuant to the provisions of THE PUBLIC SERVICE VEHICLES ACT, to operate the said vehicle in accordance with the regulations of the Highway Traffic Board governing the classification as designed by the letter shown above.

If licensed as a Public Service Vehicle, in addition to goods exempted from cargo insurance, the following, for which cargo insurance and bond has been filed, may be transported.

Livestock and farm produce

NOTE

Certificate is not to be transferred without authority. Certificate must be framed with proper protection and carried in cab of vehicle.

Not valid unless stamped by issuing office in space below and plate number stated.

Make Year	Serial No. Engine No.	Mfrs. Cap'y Weight	M.P. No. Affixes
FORD 1949	10000001	6000 8100	00000 159

MR JOHN DOE,
EDMONTON,
ALTA.

Front Tires.	Rear Tires.	Max. Weight.	Body.
		825-20D	20000

This Certificate expires March 31, 1950,
unless otherwise cancelled by the Board.

G. H. N. MONKMAN,
Chairman.

(Transfer Form on reverse side)

For Head Office Use Only

Government of Alberta

Highway Traffic Board

License No.

M.F. No.

Reg'n. Fee

Trans. Cert. No. Freight Fee ...

Leave this space blank.

APPLICATION FOR TRANSFER

(to be completed by applicant or issuer)

To New Truck—Same Owner.

W.B. Fee

Freight Fee

Make Year

Serial Engine

Mfr's Cap'y Weight

Tires: Front Wheelbase

Rear Max. Weight

Insurance Type of Truck

Commodities License No.

Location of Farm

To New Owner—Same Truck

We hereby give notice of change
of ownership of above vehicle and license. Fee \$1.00.

FROM

TO

(Vendor's Signature)

(Purchaser's Signature)

(Address)

(Address)

Date 19.....

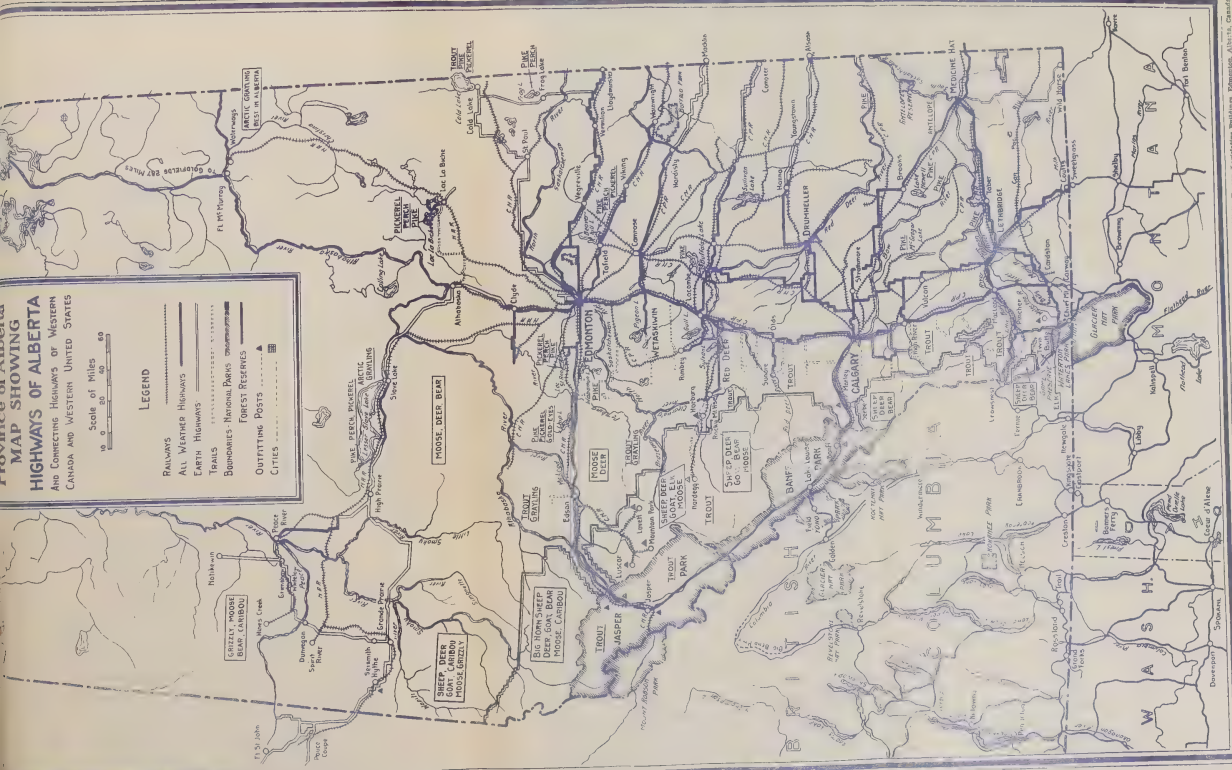
TRAILING MAP SHOWING HIGHWAYS OF ALBERTA

AND CONNECTING HIGHWAYS OF WESTERN
CANADA AND WESTERN UNITED STATES

Scale of Miles
10 0 20 40 60

LEGEND

- RAILWAYS ————
- ALL WEATHER HIGHWAYS ————
- EARTH HIGHWAYS ————
- TRAILS ————
- BANDHOUSES-NATIONAL PARKS ————
- FOREST RESERVES ————
- OUTFITTING POSTS ————▲
- CITIES ————■



MR. FRAWLEY: Q. This brief is in a little different class as compared to the other briefs. It presents no grievance or any anomaly in the freight rate structure. Perhaps a very short word from me might indicate why it was presented. I think I said to the Board a few days ago that I found, as I went through the original hearings, there were pretty continual references to Alberta as a place where the motor carrier industry was unregulated as to rates. My position is: That there is a perfectly satisfactory state of affairs in Alberta notwithstanding that fact, notwithstanding that admitted fact. So I thought it would be well if we presented a brief which contains the story of the industry and outlines what the situation is, generally speaking.

THE CHAIRMAN: Does it require any evidence?

MR. FRAWLEY: It really requires no evidence at all, but Mr. Harries is prepared. He prepared the brief and he is here for cross-examination.

MR. FRAWLEY: Q. Is there anything at all which you want to call attention to, Mr. Harries?

A. I do not think so.

MR. SINCLAIR: This is moving at a pace which just staggers me.

THE CHAIRMAN: It does no more than what Mr. Frawley says it does.

MR. SINCLAIR: If he is merely filing the brief as a matter of information.

MR. FRAWLEY: It justifies the situation as it exists in Alberta today. If you have anything to question in that situation, you operate some trucks out there --

MR. SINCLAIR: If the brief is filed as a matter

of information for the Commission, I am certainly not, on behalf of the Canadian Pacific -- I am sure to spend some considerable time asking Mr. Harries questions because I might disagree with the brief statement in this brief, and I am sure that my friend Mr. O'Donnell on behalf of the Canadian National would also like to ask questions on this brief, if it is going to be uttered as a matter of information as an Alberta statement. For instance, as I just leaf it over, I notice it has general merchandising zones.

MR. FRAWLEY: What page is that?

MR. SINCLAIR: Page 3 shows number of public service vehicles as 3,806. I think in Alberta there are quite a few exceptions to the loads that have to pay regular P.S.V. licences. Isn't that right, Mr. Harries? There are exceptions for hauling certain types of farm produce and things like that, from the usual regulations of the Board?

THE WITNESS: You have your classification of licences as we point out in Appendix B.

THE CHAIRMAN: Pardon me. I want to ask Mr. Covert a question. Since we have to adjourn at precisely 4.45 today on account of appointments, have you anything to suggest?

MR. COVERT: I think Mr. Sinclair does not want to be put in a position that, because of failure to cross-examine, he is admitting anything. If Mr. Frawley says Mr. Harries is going to be back here in January --

MR. SINCLAIR: That would give me an opportunity. That would be satisfactory.

MR. COVERT: Before we adjourn, we have about three minutes, and I want to make sure whether or not Mr. Frawley was putting in that amendment on Industrial

Location, whether it had been put into the record.

MR. FRAWLEY: Oh, well, let us be certain. I would like to ask that that amendment will be put into today's record at this point, so that it will appear in the record. It reads:

"Revised 9th December, 1949.

INDUSTRIAL LOCATION IN ALBERTA
AND THE PRESENT RATE STRUCTURE

Proposed Statutory Changes

(1) Rate Relationships

New Section 321 A

The Board shall, upon application by an interested party or parties, establish rates on raw materials and rates on products made in whole or in part from such raw materials in such manner that the relationship between the rates on raw materials and the rates on products made therefrom shall not per se discourage the processing, manufacture or other conversion of such raw materials at or near the point of production of the raw materials; provided that the onus shall be upon the applicant to satisfy the Board that the existing rate relationship discourages per se the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials; and provided further that the establishment of any such rate relationship shall not result in an undue or unjust differential between the raw material rates so established and the rates on similar raw materials or between the product rates so established and the rates on similar products;

(2) Stop-Off Privileges

New Section 316 A

...the ...
...the ...
...the ...
...the ...

...the ...
...the ...
...the ...

...the ...
...the ...

...the ...

...the ...

...the ...

...the ...

...the ...

...the ...

...the ...

...the ...

...the ...

...the ...

...the ...

...the ...

Upon complaint by any interested party that any railway company has refused to accord to the complainant a stop-off privilege or an in-transit privilege, the Board may order and direct the company to accord such privilege subject to such terms and conditions as to the Board may seem just and reasonable.

(3) Developmental Rates

New Section 316 B

Every tariff publishing a rate, other than a competitive rate, made for the purpose of assisting industry shall contain a condition fixing the period during which such rate shall remain in effect and such rate shall not be renewed except for such period of time as the Board in its discretion may declare to be necessary or advisable."

THE CHAIRMAN: That is the amendment we already have?

MR. FRAWLEY: It is the amendment in respect to industrial location in the Alberta brief.

MR. COVERT: I thought it would be a good thing to have it in the record.

MR. FRAWLEY: Yes. I hunted it up just about noon, sir.

MR. COVERT: There was one --

MR. FRAWLEY: You suggested it would be well to put it in so that it could be the subject of observations.

MR. COVERT: There was one thing more, Mr. Chairman, and that is: There was a brief submitted from the Saskatchewan Association of Rural Municipalities. All it is is an endorsation of the

Saskatchewan brief, and I just wanted to have it taken into the record as read. I think they have seen it. The brief reads:

The Executive of the Saskatchewan Association of Rural Municipalities begs leave to record with you the Association's unqualified endorsement of the submissions and recommendations contained in the brief on the question of Railway Freight Rates which has been prepared for presentation on behalf of the Saskatchewan Government. Since the initial application for higher Freight Rates was made by the Railways, over three years ago, the Saskatchewan Association of Rural Municipalities has been represented on the Saskatchewan Government's Advisory Committee on Freight Rates, and has thus been associated with the preparation of the Saskatchewan brief. In view of this fact it was decided that an endorsement by our Association of the Saskatchewan Government's brief would serve the same purpose as a separate submission by the Association, without burdening the Commission with a review of additional material, much of which would be largely a repetition of what has already been submitted by the Saskatchewan Government or other interested bodies. We trust, therefore, that this brief submission on behalf of the Saskatchewan Association of Rural Municipalities will be received and considered in that light.

The Saskatchewan Association of Rural Municipalities is a municipal service organization, supported by voluntary membership of the rural municipalities, and our annual membership has, for many years, included all of the 303 organized rural municipalities of this

Province. The officials of these local self-governing units are closely in touch with local conditions and sentiment, and the voice of the Association may, therefore, be rightly regarded as substantially representative of the collective views of Saskatchewan's rural population. The relative weight of that rural opinion may be judged by the fact that, according to figures contained in the latest report of the Department of Municipal Affairs, slightly more than sixty per cent of Saskatchewan's total population is rural. In this connection it is significant that since the request for higher freight rates was first brought forward resolutions opposing a general increase in freight rates have been passed at each of our Association's annual conventions.

The particular interest of the rural municipalities in the question of Railway Freight Rates is fairly obvious. The revenues of the rural municipalities are derived from land taxation and the ability of the municipality to finance the services which it is required to provide is regulated by the tax-paying ability of its ratepayers. When they are able to pay their municipal levies the municipality is able to take care of its wider obligations. When the tax-paying ability of the rural ratepayer is impaired or wiped out through crop failure, low prices or other adverse economic conditions, the result is quickly reflected in a corresponding impairment of the financial ability of the municipality. It follows that anything which tends to affect either the income or the production costs of the farmer is of direct concern to the rural municipalities, and freight rates is an item which falls within that classification.

While increased freight rates, without compensating price controls, will be reflected in varying degree in the living costs of all residents of Saskatchewan, the farmer is in a particularly vulnerable position by reason of the fact that he must pay incoming transportation charges on the necessities of life and the instruments of production, and must also pay outgoing transportation charges in conveying his products to market. The importance of Freight Rates in the agricultural economy of Saskatchewan, therefore, assumes proportions of considerable magnitude. It should be recognized, also, that, as agriculture is the basic industry of Saskatchewan, the comparative prosperity of other people engaged in business, professional or industrial pursuits is largely dependent upon the economic stability of the farming industry, and that from this viewpoint anything which affects our agricultural economy is of very vital interest to our province as a whole.

As this submission is primarily an endorsement of the Saskatchewan Government's brief it is not our intention to attempt any further enlargement on specific points, other than to urge that in considering the whole issue of Railway Freight Rates due recognition should be given to the importance of Saskatchewan agriculture in our national economy, and to the economic handicap under which Saskatchewan, as an agricultural province, has laboured by reason of its location within the Dominion.

We bespeak your recognition of this endorsement of the Saskatchewan Government's brief and trust that

the results of the researches and deliberations of the Royal Commission on Transportation will be reflected in the development of sound and equitable policies with respect to both the level and the distribution of transportation costs throughout the Dominion.

Respectfully submitted on behalf of the Saskatchewan Association of Rural Municipalities.

MR. COVERT: I believe Mr. Barry wanted to speak for one minute.

MR. BARRY: I do not believe we got any copies of the amendment made this morning by Mr. Frawley, except of the new one with respect to industrial location.

MR. COVERT: That is the one.

MR. BARRY: Could not the other two be inserted in the record as well?

MR. FRAWLEY: That has already been done. They will appear in today's transcript, the revision known as 313-A and 314-A, as well as the one Mr. Covert has just spoken of. They will all be in today's transcript.

THE CHAIRMAN: We now stand adjourned until Monday morning.

---At 4.45 p.m. the Commission adjourned until Monday, December 12, 1949, at 10.30 a.m.

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